

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawai'i 96813

April 27, 2007

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

REQUEST FOR AUTHORIZATION AND APPROVAL TO IMPLEMENT ADOPTION OF
THE PAPAĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT JOINT PERMIT
FORM FOR PERMITTED ACTIVITIES WITHIN THE NORTHWESTERN HAWAIIAN
ISLANDS STATE MARINE REFUGE;

AND

REQUEST FOR DELEGATION OF AUTHORITY TO THE CHAIRPERSON OR
AUTHORIZED REPRESENTATIVE OF THE DEPARTMENT OF LAND AND NATURAL
RESOURCES TO ACT AS SIGNATORY FOR CO-TRUSTEE STATE OF HAWAII ON
PERMITS TO BE ISSUED FOR ACTIVITIES OUTSIDE STATE LANDS AND WATERS
BUT WITHIN THE PAPAĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT

SYNOPSIS:

The Division of Aquatic Resources (DAR), working in coordination with the State of Hawai'i's Co-Trustees to the Papahānaumokuākea Marine National Monument recommends the adoption of the terms and conditions contained in a joint permit form template to replace the previous State permit form template as issued for permitted activities within the Northwestern Hawaiian Islands State marine refuge pursuant to Chapter 13-60.5, HAR. The Board may prescribe forms of instruments and documents pursuant to § 171-6(3), HRS. Since joint permits are to be signed by representatives of all Co-Trustees, delegation of BLNR's authority to DLNR's Chairperson or the Chairperson's authorized designated representative is requested under § 171-6(8), HRS, for proposed permitted activities that will occur in areas outside State waters as authorized under Chapter 13-60.5 HAR.

LEGAL REFERENCES:

Hawai'i Revised Statutes (HRS) §§ 171-6(3) and (8), as amended;
Hawai'i Administrative Rules (HAR) ch. 13-60.5;
Presidential Proclamation 8031; MOA among State of Hawai'i DLNR, and U.S. Dept. of the Interior USFWS, and U.S. Dept. of Commerce NOAA for Promoting Coordinated Management of the Northwestern Hawaiian Islands Marine National Monument;
50 CFR Part 404

LOCATION:

The Papahānaumokuākea Marine National Monument (Monument) consists of all lands and interest in lands owned or controlled by the Government of the United States within the

boundaries of the Monument, including emergent and submerged lands and waters of the Northwestern Hawaiian Islands (NWHI). The boundaries of the Northwestern Hawaiian Islands Marine Refuge (within the Monument) include “reefs, and shoals, and their appurtenant reefs and all state waters extending three miles seaward of any coastline beginning and including Nihoa Island and Kure Atoll, but excluding Midway Atoll...” per § 13-60.5-2, HAR.

HISTORY:

On May 26, 2006, the Land Board gave its after-the-fact approval for DLNR to enter into a Memorandum of Agreement with U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration (NOAA) National Marine Sanctuaries Program and National Marine Fisheries Service, for promoting coordinated management of the vast and remote Northwestern Hawaiian Islands (NWHI), a nearly pristine marine ecosystem where over 7,000 marine species exist. The May 26, 2006 Memorandum of Agreement was in response to the NWHI Coral Reef Ecosystem Reserve established by Executive Orders 13178 and 13196 (signed Dec. 4, 2000 and Jan. 18, 2001 respectively).

Permit regulations for activities in the State Northwestern Hawaiian Islands Marine Refuge were established effective October 10, 2005 as Chapter 13-60.5, HAR. State NWHI permits have been issued by BLNR since 2006 under that chapter and § 187A-6, HRS. All federal permits for the NWHI had been issued separately by the appropriate federal agency prior to the creation of the Monument by President Bush on June 15, 2006. The prior terms and conditions of the state-issued NWHI permits through BLNR were mainly derived from State law, specifically the provisions of Chapter 13-60.5, HAR, and incorporating DLNR policy concerns.

With the creation of the Monument, the State of Hawai‘i achieved Co-Trustee status under the MOA signed by Governor Lingle and the Secretaries of Interior and Commerce on December 8, 2006. The State through DLNR has been allowed to take a widened perspective in its role in preserving and conserving Monument natural and cultural resources. The principal purpose of the agreement was to identify the Co-Trustee roles and responsibilities for the long-term comprehensive conservation and management of the marine resources and species in the NWHI, and to carry out coordinated resource management of the NWHI marine ecosystem. Section IV of the MOA designates an appointed representative from the DLNR as the responsible official of the State of Hawai‘i as Co-Trustee. Item A.3. of Section IV outlines the responsibilities of the Co-Trustees, which includes A.3.k. “Enhance coordination by jointly issuing permits required for activities allowed under Presidential Proclamation 8031.”

DISCUSSION:

The proposed joint permit has undergone intense scrutiny in an extensive process over the past four months. In consultation and conjunction with staff and counsel from the White House Council on Environmental Quality, U.S. Departments of Commerce, Interior, and Justice; the Office of Hawaiian Affairs, and the Department of the Attorney General, a general permit template was developed for joint issuance by the Co-Trustees. Access may be permitted to the Papahānaumokuākea Marine National Monument for six types of activities: Research, Education, Native Hawaiian practices, Recreation (Midway only), Conservation & Management,

and Special Ocean Use. The general joint permit form is being proposed for adoption and approval by the Land Board. (See Appendix "A")

A proposed activity must qualify for one or more permit type, meet the findings listed below and in Chapter 13-60.5 HAR, and meet the permitting procedures and criteria in order for a permit to be issued. There are findings required for recreational activities, Native Hawaiian practices, and special ocean use permits. Passage without interruption through the Monument requires notification by phone or email at least 72 hours prior to the entry date. The joint permit has specific regulatory criteria that must be met by all applicants to demonstrate that their proposed activities are consistent with the President's Proclamation and the goals and objectives of the Monument. In order to issue a permit for the first five activity types, the Co-Trustees must make the following findings:

- 1. The activity can be conducted with adequate safeguards for the resources and ecological integrity of the Monument;*
- 2. The activity will be conducted in a manner compatible with the purposes of the Proclamation, considering the extent to which the conduct of the activity may diminish or enhance Monument resources, qualities, and ecological integrity, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;*
- 3. There is no practicable alternative to conducting the activity within the Monument;*
- 4. The end value of the activity outweighs its adverse impacts on Monument resources, qualities, and ecological integrity;*
- 5. The duration of the activity is no longer than necessary to achieve its stated purpose;*
- 6. The applicant is qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;*
- 7. The applicant has adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;*
- 8. The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to their impacts to Monument resources, qualities, and ecological integrity;*
- 9. The applicant's vessel has been outfitted with a mobile transceiver unit approved by OLE and complies with the requirements of §404.5; and*
- 10. There are no other factors that would make the issuance of a permit for the activity inappropriate.*

A comparison of specific terms and conditions contained in prior State NWHI permits is also attached for your perusal (see Appendix "B") to show that the same State terms and conditions have generally been retained in the proposed joint permit form, or promulgated into federal law (see 50 CFR Part 404 (Appendix "C"), also available online at <http://ecfr.gpoaccess.gov/> under Title 50, part 404). A sample prior Northwestern Hawaiian Islands State Marine Refuge Permit is included for reference in Appendix "D."

Many similar concerns addressed in prior State permit conditions, such as protocols addressing possible introduction of non-native species, prevention of spread of disease, non-harassment of marine mammals, and curtailing commercial exploitation of resources have been revised and incorporated in the joint permit conditions (protocols attached at Appendices "E", "F" and "G"). The joint permit further addresses other contingencies (biohazards, cumulative impacts, safety issues, reporting requirements, treatment of data, etc.), issues of concern (disturbance of cultural,

historic, or archaeological sites; monitoring of permitted activities, provision of a cultural briefing, etc.), and makes clear that compliance with federal and state law remains a responsibility of all permittees and those covered by the permit.

JURISDICTIONAL ISSUES TO BE SHARED BY CO-TRUSTEES:

Although it is clear from the Proclamation and MOA that the State's jurisdiction in the Monument is neither diminished nor enlarged, the Co-Trustees wish to develop a system in which all three Co-Trustees weigh in equally on all of the permits. The Co-Trustees understand that a joint management effort and approach is preferred to piecemeal management of Monument resources.

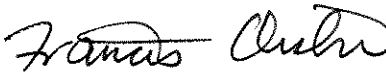
Thus, even for matters of solely federal concern (e.g., in federal waters beyond three miles, or on Midway – which is not part of the State of Hawai'i) where State jurisdiction was not previously implicated, the Co-Trustees wish to have the State as signatory to the jointly-issued permit to ensure and enhance cooperative efforts of joint management. By the same token, it is intended that all prior permits previously issued for the NWHI by the Land Board under Chapter 13-60.5 HAR will henceforth be also approved by all Co-Trustees.

To this end, because jurisdiction in such cases is normally outside the Land Board, DLNR proposes that the Chairperson (or the Chairperson's designee – a deputy director of DLNR or the administrator of either the Division of Aquatic Resources or Division of Forestry and Wildlife) be delegated authority by the Land Board pursuant to § 171-6(8), HRS, to address and approve such permits administratively without further consultation or approval necessary from the Land Board. Such approval would only be given in the event that the proposed activities do not include or implicate State waters, and do not currently require Land Board approval under State regulations. This proposal has been previously approved by the Department of the Attorney General.

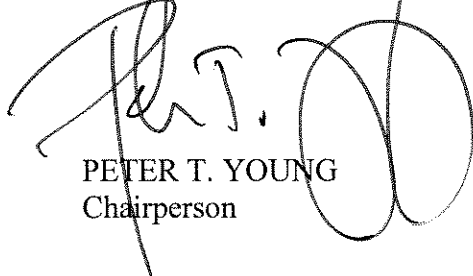
RECOMMENDATIONS:

1. That the Board authorize and approve the adoption of the Papahānaumokuākea Marine National Monument Joint Permit Form for permitted activities within the Northwestern Hawaiian Islands State Marine Refuge.
2. That the Board approve the delegation of authority to the Chairperson or designated representative (as indicated above) of the Department of Land and Natural Resources to act as signatory for Co-Trustee State of Hawai'i on Monument permits to be issued only for activities outside state land, waters, or jurisdiction, but within the Papahānaumokuākea Marine National Monument, without prior presentation to the Board.
3. That all activities permitted within the Papahānaumokuākea Marine National Monument under the authority of the Chairperson or designated representative be summarized quarterly and the summary presented to the Land Board.

Respectfully submitted,


for DAN POLHEMUS
Administrator

APPROVED FOR SUBMITTAL


PETER T. YOUNG
Chairperson

Request for Authorization and Approval to Implement Adoption of the PAPA HĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT Joint Permit Form for Permitted Activities Within the Northwestern Hawaiian Islands State Marine Refuge;

and

Request for Delegation of Authority to the Chairperson or Authorized Representative of the Department of Land and Natural Resources to Act as Signatory for Co-Trustee STATE OF HAWAII on Permits to be Issued for Activities Outside State Lands and Waters but Within the PAPA HĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT

APPENDICES

Appendix A. Papahānaumokuākea Marine National Monument Joint Permit Form

Appendix B. Comparison of Northwestern Hawaiian Islands State Marine Refuge Permit Conditions (General and Special) with General Conditions and Regulations for Papahānaumokuākea Marine National Monument Joint Permits.

Appendix C. 50 CFR Part 404

Appendix D. Sample Northwestern Hawaiian Islands State Marine Refuge Permit

Appendix E. Disease and Introduced Species Prevention Protocol for Permitted Activities in the Papahānaumokuākea Marine National Monument.


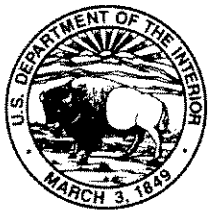
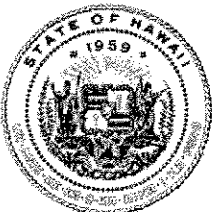
Appendix F. Disease and Introduced Species Prevention Protocol for Permitted Activities in the Papahānaumokuākea Marine National Monument - Explanation.

Appendix G. Disease and Introduced Species Prevention Protocol for Permitted Activities in the Papahānaumokuākea Marine National Monument – References and Reviews.

Appendix A

Papahānaumokuākea Marine National Monument Joint Permit Form

(This is an index page only.)

Papahānaumokuākea Marine National Monument
 6600 Kalanianaʻole Hwy
 Suite 300
 Honolulu, HI 96825

PAPAHĀNAUMOKUĀKEA
MARINE NATIONAL MONUMENT
PERMIT

Permittee:	Permit Number:	PMNM-200x-xxx
	Effective Date:	
	Expiration Date:	

Project Title:

This permit is issued for activities in accordance with Proclamation 8031 (“Proclamation”) establishing the Papahānaumokuākea Marine National Monument (“Monument”) under the Antiquities Act of 1906, 16 USC §§ 431-433 (“Antiquities Act”) and implementing regulations (50 CFR Part 404). All activities must be conducted in accordance with the Proclamation and the regulations (attached). No activity prohibited by the Proclamation or 50 CFR Part 404 is allowed except as specified below.

Subject to the terms and conditions of this permit, the National Oceanic and Atmospheric Administration (NOAA), the State of Hawai‘i, and the U.S. Fish and Wildlife Service (collectively, the Co-Trustees) hereby authorize the permittee listed above to conduct _____activities within the Monument. All activities are to be conducted in accordance with this permit. The permit application is incorporated into this permit and made a part hereof; provided, however, that if there are any conflicts between the permit application and the terms and conditions of this permit, the terms and conditions of this permit shall be controlling.

PERMITTED ACTIVITY DESCRIPTION:

The following activities are authorized by this permit:

- No further disturbance of the cultural or natural resources of the Monument is allowed.

PERMITTED ACTIVITY LOCATION:

Other than entrance into the Monument, the permitted activities listed above are allowed at the following locations:

- 1.

GENERAL TERMS AND CONDITIONS:

In accordance with the Proclamation and applicable regulations, the permitted activities listed above are subject to the following general terms and conditions:

1. The permittee must sign and date this permit on the appropriate line below. Once signed and dated, the permittee must provide a signed original copy to the Monument official identified below. The permit becomes valid on the date the last Monument official signs the permit and shall remain valid for not more than one (1) year from that date.

Permit Coordinator
Papahānaumokuākea
Marine National Monument
6600 Kalanianaʻole Hwy. Suite 300
Honolulu, HI 96825

2. This permit is neither transferable nor assignable and must be carried by the permittee while engaging in any activity authorized by this permit. All other persons entering the Monument under the authority of this permit must provide the name of the permittee or the permit number to any authorized enforcement or management personnel upon request.
3. This permit may only be modified by written amendment approved by the Co-Trustees. Modifications to this permit must be requested in the same manner as the original request was made. Any modifications requested by the permittee, such as adding or changing personnel to be covered by the permit or to change the activities that are allowed, must be made in writing.
4. This permit is subject to suspension, modification, non-renewal, or revocation for violation of the Proclamation, implementing regulations, or any term or condition of the permit. Any verbal notification of a violation from an authorized Monument representative may require immediate cessation of activities within the Monument. The issuance of a permit shall not constitute a vested or property right to receive additional or future permits. This permit may, in the sole discretion of the Co-Trustees, be renewed or reissued. However, there is no right

to a renewal or re-issuance of a permit. Failure to fulfill permit requirements may affect consideration of future permit applications.

5. Permit terms and conditions shall be treated as severable from all other terms and conditions contained in this or any other ancillary permit. In the event that any provision of this permit is found or declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms or conditions of this permit.
6. This permit does not relieve the permittee of responsibility to comply with all federal, state and local laws and regulations. Activities under this permit may be conducted only after any other permits or authorizations necessary to conduct the activities have been obtained.
7. The permittee may be held liable for the actions of all persons entering the Monument under the authority of this permit.
8. All persons entering the Monument under the authority of this permit are considered under the supervision of the permittee and may be liable in addition to the permittee for any violation of this permit, the Proclamation and implementing regulations in conjunction with this permit. The permittee must ensure that all such persons have been fully informed of the permit terms and conditions prior to entry into the Monument. Each such person must provide written acknowledgment to the permittee, prior to entry into the Monument, that he/she has received a copy of the permit, agrees to abide by all applicable terms and conditions, and may be liable for violations of the permit. The permittee shall maintain all signed acknowledgments and submit them with the summary report described in General Condition #22.b.
9. Notification of entry into the Monument must be provided at least 72 hours, but no longer than one month, prior to the entry date. Any updates to the list of personnel must also be provided at least 72 hours before entering the Monument. Notification of departure from the Monument must be provided within 12 hours of leaving the Monument. Notification may be made via e-mail, or telephone by contacting: E-mail: nwhi.notifications@noaa.gov; Telephone: 1-866-478-6944; or 1-808-395-6944. No other methods of notification will be considered valid.
10. The permittee and any person entering the Monument under the authority of this permit shall, before entering the Monument, attend a cultural briefing or view designated cultural informational materials on Papahānaumokuākea regarding the region's cultural significance and Native Hawaiians' spiritual and genealogical connection to the natural and cultural resources. Persons entering the Monument at Midway Atoll may satisfy this requirement upon arrival.
11. All vessels (including tenders and dive boats), engines and anchor lines shall be free of introduced species prior to entry into the Monument. To ensure this, all

vessels, engines and anchor lines shall be inspected for potential introduced species prior to departing the last port before entering the Monument. No later than 24 hours prior to entry, the permittee shall provide the Monument Permit Coordinator with a report prepared by the individual conducting the inspection that: a) sets forth when and where the inspection occurred; b) identifies any introduced species observed, including where found; c) summarizes efforts to remove any species observed; and d) certifies the vessel as free of all introduced species. The Monument Permit Coordinator shall review the report and, based on the review, may delay the entry into the Monument until all concerns identified by the Monument Permit Coordinator have been addressed.

12. All hazardous materials, biohazards and sharps, must be pre-approved by the Co-Trustees. For purposes of this permit, "hazardous material" has the same meaning as the definition found at 49 CFR §105.5 (U.S. Department of Transportation). All hazardous materials, biohazards and sharps must be stored, used, and disposed of according to applicable laws and Monument-approved protocols. The permittee, or a designated individual entering the Monument under the authority of this permit must be properly trained in the use and disposal of all such materials proposed. Proof of appropriate training may be required by the Co-Trustees. No such material may be left in the Monument after the departure of the permittee unless it has been previously approved by Monument staff. Immediately after the project is complete the permittee must remove all such materials from the Monument. The permittee will be responsible for all costs associated with use, storage, transport, training, disposal, or HazMat response for these materials.
13. All equipment or supplies brought into the Monument, or structures of any kind built in the Monument by the permittee are the responsibility of the permittee. All materials that are brought to the Monument by the permittee must be removed by the permittee except as otherwise permitted. Any permanent structures, equipment, or supplies that require maintenance, are determined to be unserviceable, or are a safety hazard, must be immediately repaired or removed from the Monument by the permittee. No structures, equipment, or supplies may be left in the Monument following the completion of the project except as listed in the permit.
14. If Monument staff are present at the field site, the permittee must meet with them before beginning permitted activities. Even with a valid permit, authorized Monument staff may prohibit entry into any location(s) within the Monument as they may deem appropriate to conserve or manage resources, particularly in areas where cumulative impacts of permitted activities are concentrated.
15. In order to facilitate monitoring and compliance, any person entering the Monument under the authority of this permit, including assistants and ship's crew shall, upon request by authorized Monument enforcement personnel, promptly: a) allow access to and inspection of any vessel or facility used to carry out permit

activities; b) produce for inspection any sample, record, or document related to permit activities, including data, logs, photos, and other documentation obtained under, or required by, this permit; and c) allow inspection on board the vessel or at the permittee's premises of all organisms, parts of organisms, and other samples collected under this permit.

16. It is prohibited to possess or consume alcohol on any National Wildlife Refuge, other than Midway Atoll in accordance with refuge regulations. Any violations will result in immediate removal of the offender from the Monument at the individual's own cost. Offenders may not be readmitted to the Monument.
17. All persons entering the Monument under the authority of this permit are responsible for the cost of removing themselves from the Monument at the conclusion of the term of the permit or upon revocation or suspension of the permit. All such persons are also responsible for the cost of removing themselves from the Monument in the event of a necessary medical evacuation, emergency evacuation, including weather, or for the cost of any necessary search and rescue operation.
18. Except as expressly required by applicable law, the Co-Trustees are not liable for any damages to equipment or injuries to the permittee and persons entering the Monument under the authority of this permit. The permittee and any person entering the Monument under the authority of this permit shall release, indemnify, and hold harmless the National Oceanic and Atmospheric Administration, the Department of Commerce, the U.S. Fish and Wildlife Service, the Department of the Interior, the United States Government, the State of Hawai'i, and their respective employees and agents acting within the scope of their duties from and against any claims, demands, actions, liens, rights, subrogated or contribution interests, debts, liabilities, judgments, costs, and attorney's fees, arising out of, claimed on account of, or in any manner predicated upon the issuance of this permit or the entry into or habitation upon the Monument or as the result of any action of the permittee or persons participating in the activity authorized by this permit. In the event that a government employee, acting in his official capacity, is the permittee, or is entering the Monument under the authority of this permit, then he shall be subject to all applicable federal and State laws that pertain to claims by or against him predicated upon the issuance of this permit or entry into or habitation upon the Monument.
19. Monument managers or their designees may verbally require the permittee to modify or cease activities not identified in this permit if, in the opinion of the managers or designees, such action is necessary to limit disturbance to or protect Monument resources, to protect government equipment, or to ensure the safety of personnel. After providing such verbal instructions, the managers or designees will provide the permittee with a written modification, suspension or revocation to this permit at the earliest practicable opportunity. The failure to follow verbal instructions or modified permit terms, or to cease activities upon suspension or

revocation of this permit, may constitute a violation of this permit, the Proclamation, the regulations, or other applicable law.

20. Disturbance of any cultural or historic property, including but not limited to Native Hawaiian cultural sites, burials, archaeological deposits, and WWII structures and features, such as stone walls and mounds, stone uprights, bunkers, batteries, camp sites, hospitals, housing areas, and radio towers; or the disturbance or collection of any historic or cultural materials and artifacts, including but not limited to bottles, dishes, cartridges, hospital materials, carvings, human remains, or Native Hawaiian bone or stone implements, found within the Monument, including the sale or trade in such items, is prohibited.
21. All Monument resources within the jurisdiction of the State of Hawai‘i are held in trust under the Hawai‘i State Constitution, Article XI, Sec. 1. The State of Hawai‘i and the Government of the United States reserve ownership or control, as the case may be, of Monument resources, both living and nonliving, that may be taken or derived from those found in the Monument.
22. The permittee must satisfy the following reporting requirements:
 - a. For activities on State lands or within State waters, the permittee must submit a monthly report on the specified form.
 - b. The permittee must maintain a cruise log including, but not limited to: anchoring locations and small boat dive locations. The log must contain a description of cruise activities and the geographic locations of those activities. Within thirty (30) days after the end of the cruise or the expiration date of this permit, the permittee must submit the cruise log and a summary report of activities conducted under this permit. The permittee having authority over the vessel must maintain a vessel discharge log, which must be submitted with the cruise log.
 - c. Annual Report. The comprehensive annual report is a summary of all activities undertaken, including but not limited to: dates of all arrivals and departures from islands and atolls within the Monument, names of all persons involved in permitted activities, details of all specimens collected, handled, etc., any other pertinent information, GPS locations of all samples collected, transects, etc., results of work to date, copy of all data collected, and a proposed schedule of publication or production of final work. The report shall include a concise summary or abstract for use in Monument reports. Two hard copies and one electronic copy (Microsoft Word preferred, but not required), must be submitted to the Co-Trustees. The annual report is due by the end of the second week of January of the calendar year that follows the year that the permit was in effect or before a new permit is issued, whichever comes first. Subsequent annual reports are required each year until all data collected under research permits are fully analyzed.

- d. The permittee must debrief the Co-Trustees following the completion of all activities in the Monument covered under this permit. The permittee must schedule the debriefing upon submitting the annual report.
 - e. The permittee must submit two copies of any article, publication, or other product created as a result of the information gained or work completed under this permit, including materials generated at any time in the future following expiration of this permit.
 - f. Any publications and/or reports resulting from activities conducted under the authority of this permit must include the notation that the activity was conducted under permit number PMNM-200x-xxx. This requirement does not apply to publications or reports produced by the news media.
 - g. All required submissions (including plans, logs, reports, and publications) shall be provided to the Monument official at the address indicated in General Condition #1.
23. All data acquired or created in conjunction with this permit will be submitted with the summary report, and annual report. Photographic and video material is considered data. The permittee retains ownership of any data, (including but not limited to any photographic or video material), derivative analyses, or other work product, or other copyrightable works, but the Federal Government and the State of Hawai'i retain a lifetime, non-exclusive, worldwide, royalty-free license to use the same for government purposes, including copying and redissemination, and making derivative works. The permittee will receive acknowledgment as to its ownership of the data in all future use. This requirement does not apply to data acquired or created by the news media.
24. Because photographic or video material that is created for personal use (i.e., not specifically acquired or created in conjunction with this permit) could unintentionally collect data that is also valuable for management purposes, the Co-Trustees reserve the right to request copies of any such material and the permittee agrees to provide a copy of such material within a reasonable time. The Co-Trustees may use such material for management purposes.
25. Any question of interpretation of any term or condition of this permit will be resolved by the Co-Trustees.

Your signature below, as permittee, indicates that you accept and agree to comply with all terms and conditions of this permit. This permit becomes valid on the date when signed by the last Monument Official. Please note that the expiration date on this permit will not be extended by a delay in your signing below.

PERMITTEE

Date

Peter Young
Chairperson
Board of Land and Natural Resources
Department of Land and Natural Resources

Date

Barry Stieglitz
Project Leader
Hawaiian and Pacific Islands National Wildlife
Refuges and Papahānaumokuākea Marine National
Monument

Date

T. ‘Aulani Wilhelm
Superintendent (NOAA)
Papahānaumokuākea
Marine National Monument

Date

Attachments (3):

1. Proclamation 8031, June 15, 2006
2. 50 CFR Part 404
3. Maps of the Papahānaumokuākea Marine National Monument

Appendix B

Comparison of Northwestern Hawaiian Islands State Marine Refuge Permit Conditions
(General and Special) with General Conditions and Regulations for the
Papahānaumokuākea Marine National Monument Joint Permits.

(This is an index page only.)

Northwestern Hawaiian Islands State Marine Refuge Permit General Condition	Papahānaumokuākea Joint Permit General Condition / Code of Federal Regulation Reference
1. This permit does not make the Board of Land and Natural Resources or the State of Hawai'i liable in any way for any claim of personal injury or property damage to the permittee or assistants which may occur during any activity authorized by this permit; moreover, the permittee and all assistants agree to hold the State harmless against any and all claims of personal injury, death or property damage resulting from activities of the permittee or any assistant, actions or omissions under this permit.	18
2. This permit conveys a privilege to engage in activities within State waters under the jurisdiction of the Division of Aquatic Resources (DAR). The permittee is responsible for complying with all applicable County, State, and Federal requirements.	6
3. The permittee and other personnel are individually responsible and accountable for their actions while conducting activities authorized under this permit. Additionally, the permittee is responsible and accountable for the actions of the permittee's assistants.	7
4. This permit is not transferable or assignable. Any person whose name does not appear on this permit and is conducting any activity described herein is subject to prosecution for violations of State Laws. The permit holder must abide by all provisions set out in the permit as well as other applicable regulations.	2
5. Permitted activities must be conducted with adequate safeguards for the environment. To the extent possible, the environment shall be restored to its existing condition prior to the cessation of the permitted activity.	50 CFR 404.7, 50 CFR 404.11
6. Permits must be carried aboard vessels and made available on request for inspection by the DLNR or USFWS Refuge or other enforcement personnel. For in-water activities, it is recommended that a copy of the permit be laminated and available for display at all times, in addition to copies held by personnel and aboard the major form of transport into the NWHI State Marine Refuge and the NWHI Marine National Monument.	2
7. All private vessels used to access the NWHI Marine Refuge must carry a minimum amount of Wreck Removal and Pollution insurance, specifically targeted and sufficient to provide for the vessel's full extraction and removal from the NWHI should it run aground or experience difficulties. The extraction method used must be approved by the Board and by other appropriate State or Federal resource trustees.	50 CFR 404.11
8. Any vessel causing damage to marine resources within the refuge may be subject to citation from DLNR and fines from the Board, in addition to costs necessary to mitigate the disturbance caused.	6, 8, 19
9. Recent concerns over the proliferation of alien algae in the main Hawaiian Islands have resulted in the need for a strong effort on the part of any visitor that conducts activities in the pristine waters of the NWHI to insure that they do not serve as vectors for the accidental introduction of these species. The minimum successful fragmentation size for at least two of the concerned algal species is less than 1 cm. The Board requires that all activities in State waters in the NWHI take all steps necessary to eliminate the possibility of accidentally transferring these (and other) harmful species into new ecosystems where they might gain a foothold.	11 & Special Condition as needed depending on permitted activities
10. The transport vessel, as well as all tenders and dive boats (inflatables, whalers), engines, anchor lines, etc. will be visually inspected for any algal remnants or other alien species which must be removed prior to departure for the NWHI. If necessary, the vessels must be washed and fumigated prior to departure from the main Hawaiian Islands. This shall be properly documented, records of which must be immediately submitted to the State upon request.	11
11. The same procedure above is required of all expeditions traveling to multiple islands within the NWHI. If drying and inspection occur after departure then the algal pieces must be retained in sealed containers until they can be disposed of back on O'ahu. Extreme care must be taken to kill these specimens (freshwater soak for 24 hours followed by drying and placement in sealed containers) during transport.	Special Condition as needed depending on permitted activities
12. All participants (including crew) in a permitted activity or aboard a permitted mode of transport will abide by the non-harassment of protected and unique marine wildlife policy. This includes staying away from Hawaiian monk seals and sea turtles, and minimize disturbance to assemblages of large apex predators such as jacks, sharks or grouper, and avoiding damage to any live coral or live rock.	50 CFR 404.7(a) & (j)
13. In accordance with Federal and State Laws, there will be no intentional release of sewage, food scraps, solids, or chemicals from the transport vessel in State waters during the permitted expedition. All sewage and other discharge items will be held in a proper storage tank until it can be off-loaded to proper handling facilities or until other written approved protocols are in place.	50 CFR 404.7(e) & (f)
14. Tenders will be outfitted with EPA omissions approved outboard engines that meet the latest environmental standards.	Special Condition as needed depending on permitted activities
15. Refueling of tenders and all small vessels will be done at the mother ship and outside the confines of the lagoons or near-shore waters.	Special Condition as needed depending on permitted activities
16. Tender and dive vessels will operate at slow speed and with a bow lookout in shallow water NWHI coral reef areas in order to minimize prop or bow damage to three dimensional coral reef habitat or endangered monk seals or sea turtles.	Special Condition as needed depending on permitted activities

17. Anchoring: a. Permitted Transport Vessel: It is illegal to anchor on living coral reef areas in the NWHI. Transport vessels will endeavor to anchor as far offshore as possible and will try to pre-determine anchorages prior to departure. b. Tenders and Dive Vessels: It is illegal to anchor on living coral reef areas in the NWHI while conducting inshore operations. In those areas where anchoring needs to occur adjacent to living coral resources, placement and retrieval of the anchor will be done by hand whenever this procedure can be done in a safe and prudent manner.	6 & 50 CFR 404.6(d)
18. The permittee, assistants and ship's crew agree to provide access to data, logs, photos and other documentation obtained under, or required by, this permit upon request of the Division, and to allow Department staff to inspect on-board the vessel, or afterwards on the permittee's premises, any and all organisms and other samples collected under this permit. Furthermore, the permittee and assistants agree to provide to the Division a copy of each published report prepared with data obtained under this permit.	15
19. The permittee may request changes to the permit. Any such request to make changes to the permit must be made in writing and received by DAR at least two weeks prior to the change, except in cases of emergencies. No change may be implemented without written approval from DAR.	3 (however, no 2-week requirement)
20. This permit expires on the date indicated on Page 1.	1
21. This permit is not to be used for nor does it authorize the sale of collected organisms. The research activity must be non-commercial and will not involve the sale of any organism, byproduct, or material collected. Furthermore, any resources or samples collected are a public trust, and are not to be used for sale, patent, bioassay, or bio-prospecting, or for obtaining patents or intellectual property rights.	21 & 50 CFR 404.11(e)(1) Bioprospecting and intellectual property rights are still being discussed due to legal concerns and will be added as special conditions in some form as needed depending on permitted activities
22. The permittee may not convey in any fashion (including, but not limited to, selling, trading, or giving) any corals, live rocks or any organisms collected under this permit to any person or party which does not already have a permit from the Hawaii Department of Land and Natural Resources authorizing possession of the same and without direct, written approval from DAR.	21 & Special Condition as needed depending on permitted activities
23. Permit holders agree to submit a project report and cruise log to DAR within 30 days after returning to Honolulu. The project report will be a brief (1-2) page statement summarizing the results of permitted activities. A cruise log shall list the days spent in the Marine Refuge, activities carried out, approximate positions, and general observations. Permit holders must also provide DAR with project summaries, GPS locations, visuals, technical reports, and/or catch reports (if applicable) for activities undertaken while in the NWHI Marine Refuge as specified in the conditions of their individual permit.	22b
24. Permit holders are encouraged to immediately report to DAR observation of any impacts to the marine resources, whether directly caused by their activities or not. This includes observations of activities conducted by other parties along with both natural and anthropogenic events. Permittees provide a valuable role as 'eyes and ears' on the water. All recorded observations by permittees will provide additional information and assist with management of the refuge. Such reporting shall include full documentation with notes, logs, photos, GPS, and other information as may be required.	22a, b, c (through monthly, post-cruise and annual reporting requirements)
25. A violation of any terms or condition of this permit or any violation of State law not covered by this permit may result in revocation of the permit and other penalties as provided by law. In addition, DAR may consider any such violation as grounds for denying any future permit applications.	4
26. The issuance of a permit shall not constitute a vested right to receive additional or future permits. There is no right to a renewal or re-issuance of a permit.	4
27. The Board may immediately amend, suspend, or revoke a permit granted pursuant to these guidelines, in whole or in part, temporarily or indefinitely, if the permit holder(s) has acted in violation of the terms of the permit, or for any good cause shown. Formal notice of such action shall be subsequently communicated in writing to the permit holder and shall set forth the reason for the action taken. Any verbal notification from a Board representative of a violation will also result in immediate cessation of all activities within the Refuge.	4, 19
28. Disease protocols:	Special Condition as needed depending on permitted activities-see Appendices D, E & F
29. No live organisms will be transported outside of the NWHI State Refuge waters, unless otherwise authorized by this permit. Samples will be killed by freezing, immersion in ethanol, or other acceptable means aboard the vessel and prior to leaving State waters.	Special Condition as needed depending on permitted activities
30. A daily log shall be submitted to and maintained by the appointed State or other co-trustee representative whereby any organisms collected will be documented on a daily basis relative to what was collected, the amount, the size of the specimens, the location (including specific GPS points), and the status of the specimen(s). The log entry will be signed by the person who collected the organisms and countersigned by the State representative after validation of the collection; this log will constitute a legal document for enforcement purposes.	22b (Cruise log, but no daily requirement)

State Permit Special Condition	Papahānaumokuākea Joint Permit General Condition / Code of Federal Regulation Reference
1. During the permitted period and before participating in a cruise allowed under this Permit, Permittee and all authorized personnel who participate in any activities in the NWHI under this permit shall attend a cultural briefing on the Northwestern Hawaiian Islands, their cultural significance and Native Hawaiian practices. Permittee shall consider providing additional access for Native Hawaiian cultural studies or practices as appropriate	10
2. Permittee shall submit a cruise plan to the State through the Division of Aquatic Resources (DAR) prior to each cruise to the NWHI allowed under this Permit, and shall timely update his personnel list with DAR if there is any change or addition thereof.	Cruise information part of permit application information. Personnel change notification required under condition 9
3. Each of the authorized personnel who participate in any activities in the NWHI under this permit shall, prior to any of such activities, read and attest with signature to the full agreement of all the term and conditions of this Permit. The signature/declaration sheets shall be submitted to DAR along with the updated personnel list, if any, prior to departures to the NWHI.	8
4. Permittee shall, within thirty (30) days of each concluded cruise to the NWHI, submit to the State through DAR a cruise report for the trip as required in the following General Permit Conditions.	22b
5. No taking, collecting, sampling, catching, killing or interacting with any wildlife in the State Waters are allowed under this permit. All forms of fishing, no matter for subsistence, sustenance, commercial or recreational purposes, are prohibited in all NWHI State waters.	50 CFR 404.7(h) Additionally, permits (as applicable) will indicate that no fishing is allowed in State waters, within the SPAs or the Midway SMA.
6. Pursuant to Section 188-23, HRS, any use of electrical shocking devices, explosives, chemicals or other contaminating or hazardous substances is expressly prohibited, except to the extent that certain chemicals are allowed for use onboard of support vessels with limitations as to the types and amounts as stated in Permittee's application. Transportation of such materials in State waters is also allowed for transit purpose only.	50 CFR 404.6(b)
7. Entries and activities of support vessel(s) in the NWHI State Waters shall require separate permit(s) from the State through DAR or from the NWHI Marine National Monument Joint Management Board. These vessel(s) shall be identified by Permittee to DAR or the Joint Management Board in a separately filed permit application, with all relevant information, at least thirty (30) days prior to departure to the NWHI.	CFR 404.4 requires all persons entering the Monument to have a permit; Joint Permit Application requires vessel information, inspection, VMS for support vessels
8. A log or report of all waste disposals occurring aboard any support vessels during the cruise shall be submitted to DAR with the mandatory cruise report. This log shall be maintained daily for all discharges occurring aboard the vessels...	22b
9. No black water, food scraps, solids, chemicals, or waste liquid will be discharged into State waters	50 CFR 404.7(e) & (f)
10. A daily impact log will be maintained by the Chief Scientist on the trip, whereby all organisms collected by personnel will be documented on a daily basis relative to the species collected... The log entry will be signed by the person who collected the organisms and countersigned by the Chief Scientist or his delegate after validation of the collection.	22c

Appendix C

50 CFR Part 404

(This is an index page only.)

S6.1.4.1 Vehicles manufactured on or after September 1, 1998 and before September 1, 2007 are not required to comply with the requirements specified in S7.

S6.1.4.2 Vehicles manufactured on or after September 1, 2007 shall comply with the requirements specified in S7.

* * * * *

Issued on: August 22, 2006.

Nicole R. Nason,

Administrator.

[FR Doc. E6-14259 Filed 8-28-06; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 404

[Docket No. 060824225-6225-01]

RIN 0648-AU82

Northwestern Hawaiian Islands Marine National Monument

AGENCIES: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC); United States Fish and Wildlife Service (USFWS), Department of the Interior (DOI).

ACTION: Final rule.

SUMMARY: NOAA and the USFWS are issuing final regulations for the Northwestern Hawaiian Islands Marine National Monument. This action codifies the prohibitions and management measures set forth in Presidential Proclamation 8031 establishing the Monument. The rule is effective immediately.

DATES: *Effective date:* These regulations are effective August 25, 2006. Written comments on the information collection requirement must be received by October 30, 2006.

ADDRESSES: Submit written comments regarding the burden-hour estimates or other aspects of the information collection requirements contained in this proposed rule by e-mail to Diana Hynek at dHynek@noaa.gov.

Coordinates for the outer boundary of the Monument, the Special Preservation Areas, the Ecological Reserves, and the Midway Atoll Special Management Area can be found at: <http://hawaiiireef.noaa.gov/management/>.

FOR FURTHER INFORMATION CONTACT:
NOAA contact: T. Aulani Wilhelm, Monument Superintendent (NOAA); 6600 Kalanianaʻole Highway, #300, Honolulu, HI 96825; (808) 397-2657.

FWS contact: Barry Stieglitz, Monument Project Leader (USFWS); Hawaiian and Pacific Islands NWR Complex, 300 Ala Moana Boulevard, Box 50167, Honolulu, HI 96850-5000; 808-792-9540.

State of Hawaii contact: Athline Clark, Special Projects Manager, Department of Land and Natural Resources, Division of Aquatic Resources; 1151 Punchbowl Street, Room 330, Honolulu, HI 96813; (808) 587-0099.

SUPPLEMENTARY INFORMATION: On June 15, 2006, President Bush established the Northwestern Hawaiian Islands Marine National Monument by issuing Presidential Proclamation 8031 (71 FR 36443, June 26, 2006) under the authority of the Antiquities Act (Act) (16 U.S.C. 431). The Proclamation reserves all lands and interests in lands owned or controlled by the Government of the United States in the Northwestern Hawaiian Islands (NWHI), including emergent and submerged lands and waters, out to a distance of approximately 50 nautical miles (nmi) from the islands. The outer boundary of the Monument is approximately 100 nmi wide and extends approximately 1200 nmi around coral islands, seamounts, banks, and shoals. The area includes the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, the Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge.

The Proclamation appropriated and withdrew the area from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including, but not limited to, withdrawal from location, entry, and patent under mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

The Proclamation provides that the Secretary of Commerce, through NOAA, has primary responsibility regarding the management of the marine areas of the Monument, in consultation with the Secretary of the Interior. The Secretary of the Interior, through the USFWS, has sole responsibility for management of the areas of the Monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce. Further, the Proclamation

provides that nothing in the Proclamation diminishes or enlarges the jurisdiction of the State of Hawaii. The Monument includes state waters, including the Northwestern Hawaiian Islands State Marine Refuge and Kure Atoll Wildlife Sanctuary. The State currently holds the submerged and ceded lands of the NWHI in trust. This public trust is overseen by the Office of Hawaiian Affairs through an amendment to the Constitution of the State of Hawaii. The State of Hawaii has primary responsibility for managing the State waters of the Monument.

The three principal entities with responsibility for managing lands and waters of the Monument—NOAA, USFWS, and the State of Hawaii (collectively, the Co-Trustees)—are working cooperatively and will consult to administer the Monument. The Co-Trustees have established a goal to provide unified management in the spirit of cooperative conservation. This relationship will be further described in a Memorandum of Agreement among the Co-Trustees.

The Proclamation requires restrictions and prohibitions regarding activities in the Monument consistent with the authority provided by the Act. The Proclamation shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law. NOAA and USFWS are promulgating as final regulations the management measures and prohibitions set forth in the Proclamation to codify them in the Code of Federal Regulations. This action will provide additional notice to the public and other interested parties of the terms of the Proclamation and activities that are prohibited or regulated and thereby facilitate improved compliance. Interested parties may view Hawaii Administrative Rules also applicable within the Monument at http://www.hawaii.gov/dlnr/dar/fish_regs/nwhi.htm.

These regulations address the requirement in the Proclamation that the Secretaries shall ensure, in addition to other things, that commercial fishing for bottomfish and other associated pelagic species may continue in the Monument for no more than 5 years. Section 404.10 sets out the conditions under which such fishing may continue to be conducted. However, commercial fishing remains prohibited in areas of the Monument not open to such fishing prior to issuance of the Proclamation.

Classification*Administrative Procedure Act*

The Secretaries find good cause to waive notice and comment on these regulations, pursuant to 5 U.S.C. 533(b)(B), and the 30-day delay in effective date pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary and contrary to the public interest because these regulations do not expand on the action already taken by the President in the Proclamation. The Proclamation became effective upon issuance on June 15, 2006. These regulations codify the prohibitions and management measures set forth in the Proclamation. Therefore, these regulations are being published as final

regulations and are effective August 25, 2006.

E.O. 12866

This rule has been determined to be significant for purposes of E.O. 12866.

Paperwork Reduction Act

This rule contains a collection-of-information requirement that was submitted to OMB for emergency approval under the Paperwork Reduction Act (PRA). The collection-of-information requirement was approved by OMB and granted OMB control number 0648-0548 which expires on February 28, 2007. We are now requesting comment on this information collection requirement for OMB's

subsequent review and approval on a non-emergency basis.

The public reporting burden for this information collection is described in the table below. The public reporting burden for permit applications and associated reporting requirements is estimated to average 1 hour per response. The public reporting burden for entry and exit notification is expected to average 15 minutes per response. The public reporting burden for VMS checklist certification is estimated to average 5 minutes per response. Each of these public reporting burdens includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

APPLICANT BURDEN

Permit type	Permits and other reporting per year	Responses per requirement	Total responses	Hours/response	Total hours	Annual record-keeping/reporting cost per response (dollar)	Total annual cost (dollar)
(a) General	33	3	99	1	99	1.00	99.00
(b) Special Ocean Use	5	3	15	24	360	1.00	15.00
(c) Native Hawaiian Practices.	2	2	4	4	16	1.00	4.00
(d) Recreation	2	3	6	1	6	1.00	6.00
(e) Entry & Exit Notice	174	2	348	5 minutes	29	0.00	0.00
(f) Purchase and installation of VMS.	50	NA	NA	4 hours	50	899 (initial cost: \$3595).	44,950.00
(g) VMS maintenance	50	NA	NA	4 hours	200	0	0
(h) VMS Certification	50	0.25	12.5	5 minutes	4	0.25	13.00
(i) Hourly VMS reports	50	3805	190,224	5 seconds	264	1.28/day	10,145.00
Total	124	190,709	1028	55,232.00

Note: VMS installation and activation hours and purchase costs are annualized by dividing by 4 years, the expected service life.

Public comment is sought regarding: whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230, or via e-mail at dHynek@noaa.gov.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject

to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 404

Administrative practice and procedure, Coastal zone, Fish, Fisheries, Historic preservation, Intergovernmental relations, Marine resources, Monuments and memorials, Natural resources, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Dated: August 24, 2006.

Conrad C. Lautenbacher Jr.,

Vice Admiral, U.S. Navy (Ret.),

Undersecretary of Commerce for Oceans and Atmosphere.

Dated: August 24, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

■ Accordingly, NOAA and USFWS add part 404, title 50 of the Code of Federal Regulations as follows:

PART 404—NORTHWESTERN HAWAIIAN ISLANDS MARINE NATIONAL MONUMENT

Sec.

404.1 Scope and purpose.

404.2 Boundary.

404.3 Definitions.

404.4 Access to the Monument.

404.5 Requirements for a vessel monitoring system.

404.6 Prohibited activities.

404.7 Regulated activities.

404.8 Emergencies and law enforcement activities.

404.9 Armed Forces actions.

404.10 Commercial fishing.

404.11 Permitting procedures and criteria.

404.12 International law.

Appendix A to Part 404—Map of the Monument Outer Boundary and Ecological Reserves, Special Preservation Areas, and Midway Atoll Special Management Area

Appendix B to Part 404—Approved Vessel Monitoring Systems

Authority: 16 U.S.C. 431 *et seq.*; 16 U.S.C. 460k-3; 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 742f, 16 U.S.C. 742l, and 16 U.S.C. 668dd-

ee; 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 1531 *et seq.*, Pub. L. No. 106-513, § 6(g) (2000).

§ 404.1 Scope and purpose.

The regulations in this part codify the provisions of Presidential Proclamation 8031, and govern the administration of the Northwestern Hawaiian Islands Marine National Monument. These regulations are jointly implemented by the Secretaries of the Interior, through the U.S. Fish and Wildlife Service (USFWS), and Commerce, through the National Oceanic and Atmospheric Administration (NOAA). Nothing in these regulations shall be deemed to diminish or enlarge the jurisdiction of the State of Hawaii.

§ 404.2 Boundary.

The Northwestern Hawaiian Islands Marine National Monument consists of all lands and interest in lands owned or controlled by the Government of the United States within the boundaries of the Monument, including emergent and submerged lands and waters of the Northwestern Hawaiian Islands. The map in Appendix A to this part 404 depicts the outer boundary of the Monument, which consists of the geodetic lines connecting the coordinates specified in the Proclamation.

§ 404.3 Definitions.

The following definitions are applicable only to this Part.

Attract or Attracting means luring or attempting to lure a living resource by any means, except the mere presence of human beings (e.g., swimmers, divers, boaters).

Bottomfish Species means Bottomfish management unit species as defined at 50 CFR 665.12.

Commercial Bottomfishing means commercial fishing for bottomfish species.

Commercial passenger vessel means a vessel that carries individuals who have paid for such carriage.

Commercial pelagic trolling means commercial fishing for pelagic species.

Deserting a vessel means:

(1) Leaving a vessel aground or adrift:

(i) Without notifying the Secretaries of the vessel going aground or adrift within 12 hours of its discovery and developing and presenting to the Secretaries a preliminary salvage plan within 24 hours of such notification;

(ii) After expressing or manifesting intention to not undertake or to cease salvage efforts; or

(iii) When the Secretaries are unable, after reasonable efforts, to reach the owner/operator within 12 hours of the vessel's condition being reported to authorities.

(2) Leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Ecological Reserve means the areas of the Monument, identified in the Proclamation, consisting of contiguous, diverse habitats that provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Monument. Specific coordinates for Ecological Reserves within the Monument are found in the Proclamation, and the Ecological Reserves consist of the areas within the geodetic lines connecting these coordinates. The Ecological Reserves are depicted on the map in Appendix A to part 404.

Ecological integrity means a condition determined to be characteristic of an ecosystem that has the ability to maintain the function, structure, and abundance of natural biological communities, including rates of change in response to natural environmental variation.

Fishing year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31.

Introduced Species means:

(1) A species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the Monument; or

(2) Any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Landing means offloading fish from a fishing vessel or causing fish to be offloaded from a fishing vessel.

Midway Atoll Special Management Area means the area of the Monument surrounding Midway Atoll out to a distance of 12 nautical miles, established for the enhanced management, protection, and preservation of Monument wildlife and historical resources. The geographic coordinates of this area, which consists of the area within the geodetic lines connecting these coordinates, are found in the Proclamation. The Midway Atoll Special Management Area is depicted on the map in Appendix A to part 404.

Mobile transceiver unit means a vessel monitoring system or VMS device, as described in Appendix E to this Part, installed on board a vessel that is used

for vessel monitoring and transmitting the vessel's position as required by this Part.

Monument means the Northwestern Hawaiian Islands Marine National Monument.

Native Hawaiian Practices means cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the non-commercial use of Monument resources for direct personal consumption while in the Monument.

Ocean-based ecotourism means a class of fee-for-service activities that involves visiting the Monument for study, enjoyment, or volunteer assistance for purposes of conservation and management.

Office for Law Enforcement (OLE) refers to NOAA, National Marine Fisheries Service, Office for Law Enforcement.

Pelagic Species means Pacific Pelagic Management Unit Species as defined at 50 CFR 665.12.

Pono means appropriate, correct, and deemed necessary by traditional standards in the Hawaiian culture.

Proclamation means Presidential Proclamation 8031, dated June 15, 2006 (71 FR 36443).

Recreational activity means an activity conducted for personal enjoyment that does not result in the extraction of Monument resources and that does not involve a fee-for-service transaction. This includes, but is not limited to, wildlife viewing, SCUBA diving, snorkeling, and boating.

Secretaries means the Secretary of Commerce and the Secretary of the Interior or their designees.

Special Preservation Area (SPA) means discrete, biologically important areas of the Monument, identified in the Proclamation, within which uses are subject to conditions, restrictions, and prohibitions, including but not limited to access restrictions. SPAs are used to avoid concentrations of uses that could result in declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Specific coordinates for Special Preservation Areas within the Monument are found in the Proclamation, and the Special Preservation Areas consist of the areas within the geodetic lines connecting these coordinates. The Special

Preservation Areas are depicted on the map in Appendix A to part 404.

Special ocean use means an activity or use of the Monument that is engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, and does not destroy, cause the loss of, or injure Monument resources. This includes ocean-based ecotourism and other activities such as educational and research activities that are engaged in to generate revenue, but does not include commercial fishing for bottomfish or pelagic species conducted pursuant to a valid permit issued by NOAA.

Stowed and not available for immediate use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

Sustenance fishing means fishing for bottomfish or pelagic species in which all catch is consumed within the Monument, and that is incidental to an activity permitted under this part.

Vessel monitoring system or VMS means a vessel monitoring system or mobile transceiver unit as described in § 404.5 and approved by Office for Law Enforcement for use on vessels permitted to access the Monument, as required by this Part.

§ 404.4 Access to the Monument.

(a) Entering the Monument is prohibited and thus unlawful except:

- (1) As provided in §§ 404.8 and 404.9;
- (2) Pursuant to a permit issued under §§ 404.10 or 404.11; or
- (3) When conducting passage without interruption in accordance with paragraph (b) of this section.

(b) Any person passing through the Monument without interruption is subject to the prohibitions in §§ 404.5, 404.6, and 404.7 and must provide notification prior to entering and after leaving the Monument. Notification of entry must be provided at least 72 hours, but no longer than 1 month, prior to the entry date. Notification of departure from the Monument must be provided within 12 hours of leaving. Notification under this paragraph may be made via e-mail, telephone or fax by contacting:

(1) E-mail:
nwhi.notifications@commat.noaa.gov;
or

(2) Telephone: 1-866-478-NWHI (6944); or (808) 395-NWHI (6944).

(c) A person providing notice under this paragraph must provide the following information, as applicable:

- (1) Position when making report.

(2) Vessel name and International Maritime Organization identification number.

(3) Name, address, and telephone number of owner and operator.

(4) USCG documentation, state license, or registration number.

(5) Home port.

(6) Intended and actual route through the Monument.

(7) General categories of any hazardous cargo on board.

(8) Length of vessel and propulsion type (e.g., motor or sail).

§ 404.5 Requirements for a vessel monitoring system.

(a) *Requirement for use.* Effective August 28, 2006, an owner or operator of a vessel that has been issued a permit for accessing the Monument must ensure that such vessel has an OLE-approved, operating VMS on board when voyaging within the Monument. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and OLE as provided by an OLE-approved communication service provider. Appendix B to this part 404 provides information regarding OLE-approved transmitting units.

(b) *Installing and activating the VMS.* Only a VMS that has been approved by OLE may be used. When installing and activating the OLE-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must:

- (1) Follow procedures indicated on an installation and activation checklist, which is available from OLE; and
- (2) Submit to OLE a statement certifying compliance with the checklist, as prescribed on the checklist.

(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact OLE, and follow instructions from that office. If notified by OLE that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by OLE the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized access to the Monument, a vessel owner or operator subject to the requirements for a VMS in this section must allow OLE, the USCG,

and their authorized officers and designees access to the vessel's position data obtained from the VMS. Consistent with other applicable laws, including the limitations on access to, and use of, VMS data collected under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretaries may have access to, and use of, collected data for scientific, statistical, and management purposes.

(f) *Authority for installation and operation.* OLE has authority over the installation and operation of the VMS unit. OLE may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by OLE.

(g) *Activities Regarding Vessel Monitoring Systems.* Effective August 28, 2006, the following activities regarding vessel monitoring systems are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Operating any vessel within the Monument without an OLE type-approved mobile transceiver unit described in this section;

(2) Failing to install, activate, repair, or replace a mobile transceiver unit prior to leaving port;

(3) Failing to operate and maintain a mobile transceiver unit on board the vessel at all times as specified in this section;

(4) Tampering with, damaging, destroying, altering, or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified in this section;

(5) Failing to contact OLE or follow OLE instructions when automatic position reporting has been interrupted as specified in this section;

(6) Registering a VMS or mobile transceiver unit to more than one vessel at the same time;

(7) Connecting or leaving connected additional equipment to a VMS unit or mobile transceiver unit without the prior approval of OLE; and

(8) Making a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit or mobile transceiver unit or communication service provider.

§ 404.6 Prohibited activities.

The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(a) Exploring for, developing, or producing oil, gas, or minerals within the Monument;

(b) Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a Monument resource;

(c) Introducing or otherwise releasing an introduced species from within or into the Monument; and

(d) Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope.

§ 404.7 Regulated activities.

Except as provided in §§ 404.8, 404.9 and 404.10, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the Monument without a valid permit as provided for in § 404.11:

(a) Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving Monument resource;

(b) Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands;

(c) Anchoring a vessel;

(d) Deserting a vessel aground, at anchor, or adrift;

(e) Discharging or depositing any material or other matter into Special Preservation Areas or the Midway Atoll Special Management Area except vessel engine cooling water, weather deck runoff, and vessel engine exhaust;

(f) Discharging or depositing any material or other matter into the Monument, or discharging or depositing any material or other matter outside the Monument that subsequently enters the Monument and injures any resources of the Monument, except fish parts (i.e., chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust;

(g) Touching coral, living or dead;

(h) Possessing fishing gear except when stowed and not available for immediate use during passage without interruption through the Monument;

(i) Swimming, snorkeling, or closed or open circuit SCUBA diving within any Special Preservation Area or the Midway Atoll Special Management Area; and

(j) Attracting any living Monument resource.

§ 404.8 Emergencies and law enforcement activities.

The prohibitions in this part do not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.

§ 404.9 Armed Forces actions.

(a) The prohibitions in this part do not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard) that are consistent with applicable laws.

(b) These regulations shall not limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

(c) All activities and exercises of the Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on Monument resources and qualities.

(d) In the event of threatened or actual destruction of, loss of, or injury to a Monument resource or quality resulting from an incident, including but not limited to spills and groundings, caused by a component of the Department of Defense or the United States Coast Guard, the cognizant component shall promptly coordinate with the Secretaries for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Monument resource or quality.

§ 404.10 Commercial fishing.

(a) *Lobster fishing.* Any commercial lobster fishing permit is subject to a zero annual harvest limit condition.

(b) *Fishing and bottomfish and pelagic species.* (1) Notwithstanding the prohibitions in § 404.7(a) and (h), commercial fishing for bottomfish and associated pelagic species may continue within the Monument subject to paragraph (c) of this section, until June 15, 2011, provided that:

(i) The fishing is conducted in accordance with a valid commercial bottomfish permit issued by NOAA; and

(ii) Such permit was in effect on June 15, 2006, and is subsequently renewed pursuant to NOAA regulations at 50 CFR part 665, subpart E as necessary.

(2) Total landings for each fishing year from fishing allowed under paragraph (b)(1) of this section may not exceed the following amounts:

(i) 350,000 pounds for bottomfish species; and

(ii) 180,000 pounds for pelagic species.

(3) Commercial fishing for bottomfish and associated pelagic species is prohibited in the Monument after June 15, 2011.

(c) *General requirements.* Any commercial fishing within the Monument shall be conducted in accordance with the following restrictions and conditions:

(1) A valid permit or facsimile of a valid permit shall be on board the fishing vessel and available for inspection by an authorized officer;

(2) No attempt is made to falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other required record or report.

(3) Only gear specifically authorized by the relevant permit issued under the Magnuson-Stevens Fishery Conservation and Management Act is allowed to be in the possession of a person conducting commercial fishing under this section;

(4) Any person conducting commercial fishing notifies the Secretaries by telephone, facsimile, or electronic mail at least 72 hours before entering the Monument and within 12 hours after leaving the Monument in accordance with § 404.4(b) and (c);

(5) All fishing vessels must carry an activated and functioning VMS unit on board at all times whenever the vessel is in the Monument;

(6) All fishing vessels must carry an observer when requested to do so by the Secretaries;

(7) The activity does not take place within any Ecological Reserve, any Special Preservation Area, or the Midway Atoll Special Management Area.

§ 404.11 Permitting procedures and criteria.

(a) *Issuance.* Subject to such terms and conditions as the Secretaries deem appropriate, a person may conduct an activity prohibited by § 404.7 if such activity is specifically authorized by a permit issued under this section.

(b) *Application requirements.* Applicants for permits under this section shall submit applications to: Northwestern Hawaiian Islands Marine National Monument, 6600 Kalanianaʻole Highway, Suite 300, Honolulu, HI 96825.

(c) *Permit Types.* A permit under this subpart may be issued if the Secretaries find that the activity:

(1) Is research designed to further understanding of Monument resources and qualities;

(2) Will further the educational value of the Monument;

(3) Will assist in the conservation and management of the Monument;

(4) Will allow Native Hawaiian practices subject to paragraph (e) of this section;

(5) Will allow a special ocean use subject to paragraph (f) of this section; or

(6) Will allow recreational activities subject to paragraph (g) of this section.

(d) *Findings.* A permit may not be issued under this section unless the Secretaries find:

(1) The activity can be conducted with adequate safeguards for the resources and ecological integrity of the Monument;

(2) The activity will be conducted in a manner compatible with the purposes of the Proclamation, considering the extent to which the conduct of the activity may diminish or enhance Monument resources, qualities, and ecological integrity, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(3) There is no practicable alternative to conducting the activity within the Monument;

(4) The end value of the activity outweighs its adverse impacts on Monument resources, qualities, and ecological integrity;

(5) The duration of the activity is no longer than necessary to achieve its stated purpose;

(6) The applicant is qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;

(7) The applicant has adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;

(8) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to their impacts to Monument resources, qualities, and ecological integrity;

(9) The applicant's vessel has been outfitted with a mobile transceiver unit approved by OLE and complies with the requirements of § 404.5; and

(10) There are no other factors that would make the issuance of a permit for the activity inappropriate.

(e) *Additional findings for Native Hawaiian practice permits.* In addition to the findings listed in paragraph (d) of this section, a permit to allow Native Hawaiian practices under paragraph (c)(4) of this section, may not be issued unless:

(1) The activity is non-commercial and will not involve the sale of any organism or material collected;

(2) The purpose and intent of the activity are appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (*pono*), and demonstrate an understanding of, and background in, the traditional practice, and its associated values and protocols;

(3) The activity benefits the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community;

(4) The activity supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the Northwestern Hawaiian Islands; and

(5) Any Monument resource harvested from the Monument will be consumed in the Monument.

(f) *Additional findings, criteria, and requirements for special ocean use permits.* (1) In addition to the findings listed in paragraph (d) of this section, the following requirements apply to the issuance of a permit for a special ocean use under paragraph (c)(5) of this section:

(i) Any permit for a special ocean use issued under this section:

(ii) Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the Monument is designated and with protection of Monument resources;

(A) Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed;

(B) Shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure Monument resources; and

(iii) Shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims;

(iv) Each person issued a permit for a special ocean use under this section shall submit an annual report to the Secretaries not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

(2) In addition to the findings listed in paragraph (d) of this section, a permit may not be issued for a special ocean use unless the activity has been determined to be consistent with the findings made pursuant to paragraph (f) of this section.

(3) Categories of special ocean use being permitted for the first time under this section will be restricted in duration and permitted as a special ocean use pilot project. Subsequent permits for any category of special

ocean use may only be issued if a special ocean use pilot project for that category meets the requirements of this section, and any terms and conditions placed on the permit for the pilot project.

(4) Public notice shall be provided prior to requiring a special ocean use permit for any category of activity not previously identified as a special ocean use.

(5) The following requirements apply to permits for a special ocean use for an activity within the Midway Atoll Special Management Area.

(i) A permit for a special ocean use for activities within the Midway Atoll Special Management Area may be issued provided:

(A) The activity furthers the conservation and management of the Monument; and

(B) The Director of the United States Fish and Wildlife Service or his or her designee has determined that the activity is compatible with the purposes for which the Midway Atoll National Wildlife Refuge was designated.

(ii) As part of a permit issued pursuant to this paragraph (f)(5), vessels may be allowed to transit the Monument as necessary to enter the Midway Atoll Special Management Area.

(6) A permit for a special ocean use for activities outside the Midway Atoll Special Management Area may be issued provided:

(i) The activity will directly benefit the conservation and management of the Monument;

(ii) The purpose of the activity is for research or education related to the resources or qualities of the Monument;

(iii) Public notice of the application and an opportunity to provide comments is given at least 30 days prior to issuing the permit; and

(iv) The activity does not involve the use of a commercial passenger vessel.

(g) *Additional findings for recreation permits.* A permit for recreational activities under paragraph (c)(6) of this section may be issued for activities to be conducted within the Midway Atoll Special Management area if, in addition to the findings listed in paragraph (d) of this section:

(1) The activity is for the purpose of recreation as defined in section 404.3;

(2) The activity is not associated with any for-hire operation; and

(3) The activity does not involve any extractive use.

(h) *Sustenance fishing.* Sustenance fishing, as defined in 404.3, may be allowed outside of any Special Preservation Area as a term or condition of any permit issued under this part. Sustenance fishing in the Midway Atoll

Special Management Area shall not be allowed unless the activity has been determined by the Director of the U.S. Fish and Wildlife Service or his or her designee to be compatible with the purposes for which the Midway Atoll National Wildlife Refuge was established. Sustenance fishing must be conducted in a manner compatible with the Proclamation and this part, including considering the extent to which the conduct of the activity may

diminish Monument resources, qualities, and ecological integrity, as well as any indirect, secondary, or cumulative effects of the activity and the duration of such effects. Sustenance fishing is subject to systematic reporting requirements when developed by the Secretaries.

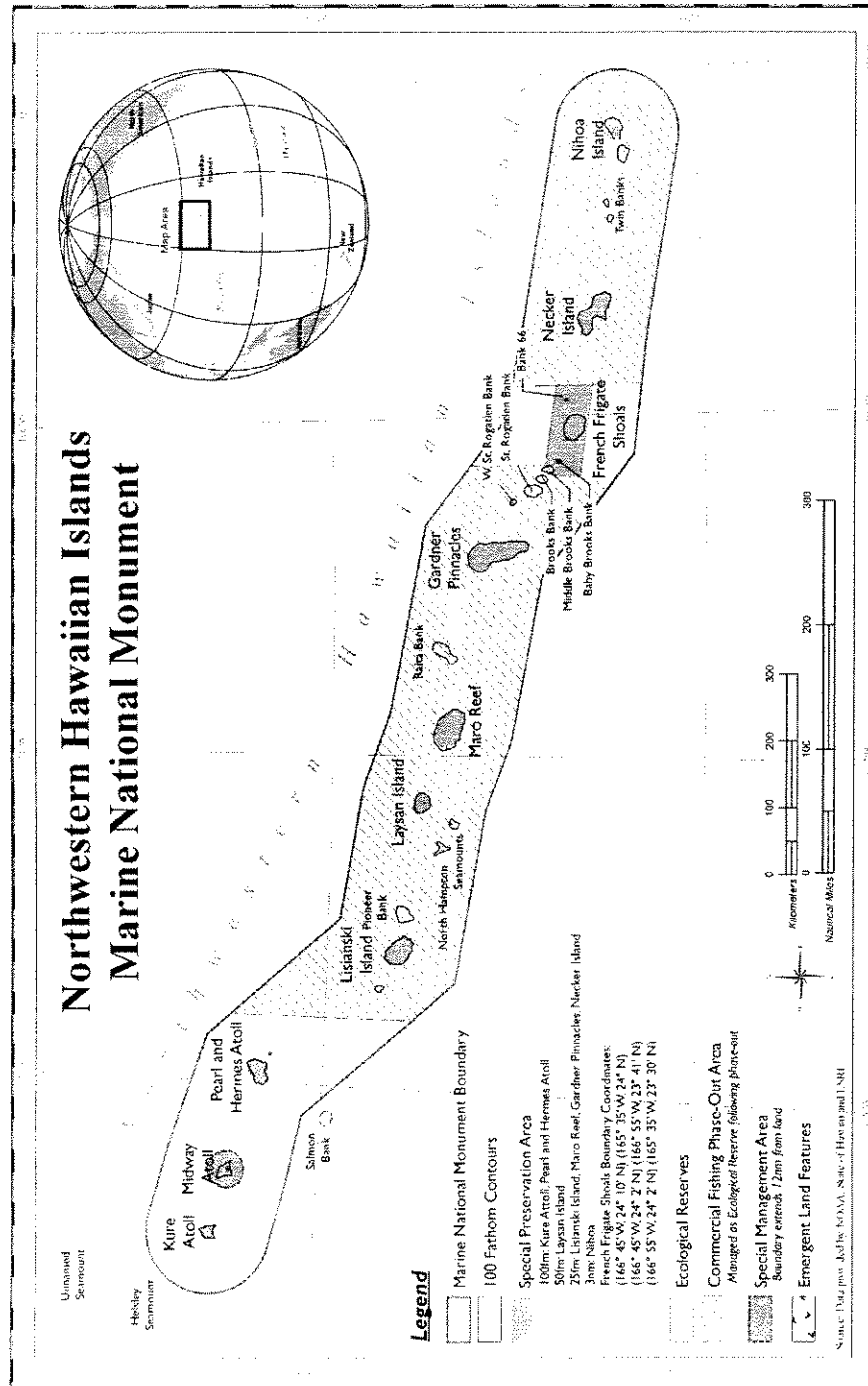
§ 404.12 International law.

These regulations shall be applied in accordance with international law. No restrictions shall apply to or be enforced

against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

Appendix A to Part 404—Map of the Monument Outer Boundary and Ecological Reserves, Special Preservation Areas, and Midway Atoll Special Management Area

BILLING CODE 3510-NK-P



Appendix B to Part 404—Approved VMS

I. VMS Mobile Transceiver Unit

Thrane & Thrane Sailor 3026D Gold VMS

The Thrane & Thrane Sailor 3026D Gold VMS (TT-3026D) has been found to meet the minimum technical requirements for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument. The address for the Thrane & Thrane distributor contact is provided in this notice under the heading VMS Provider Address.

The TT-3026D Gold VMS features an integrated GPS/Inmarsat-C unit and a marine grade monitor with keyboard and integrated mouse. The unit is factory pre-configured for NMFS VMS operations (non-Global Maritime Distress & Safety System (non-GMDSS)). Satellite commissioning services are provided by Thrane & Thrane personnel.

Automatic GPS position reporting starts after transceiver installation and power activation onboard the vessel. The unit is an integrated transceiver/antenna/GPS design using a floating 10 to 32 VDC power supply. The unit is configured for automatic reduced position transmissions when the vessel is stationary (i.e., in port). It allows for port stays without power drain or power shut down. The unit restarts normal position transmission automatically when the vessel goes to sea.

The TT-3026D provides operation down to +/- 15 degree angles. The unit has the capability of two-way communications to send formatted forms and to receive e-mail and other messages. A configuration option is available to automatically send position reports to a private address, such as a fleet management company.

A vessel owner may purchase this system by contacting the entity identified in this notice under the heading "VMS Provider Address". The owner should identify himself or herself as a vessel owner issued a permit to operate in the Northwestern Hawaiian Islands Marine National Monument, so the transceiver set can be properly configured. To use the TT-3026D the vessel owner will need to establish an Inmarsat-C system use contract with an approved Inmarsat-C communications service provider. The owner will be required to complete the Inmarsat-C "Registration for Service Activation for Maritime Mobile Earth Station." The owner should consult with Thrane & Thrane when completing this form.

Thrane & Thrane personnel will perform the following services before shipment: (1) Configure the transceiver according to OLE specifications for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument; (2) download the predetermined NMFS position

reporting and broadcast command identification numbers into the unit; (3) test the unit to ensure operation when installation has been completed on the vessel; and (4) forward the Inmarsat service provider and the transceiver identifying information to OLE.

II. Inmarsat-C Communications Providers

It is recommended, for vendor warranty and customer service purposes, that the vessel owner keep for his or her records and that Telenor and Xantic have on record the following identifying information: (1) Signed and dated receipts and contracts; (2) transceiver serial number; (3) Telenor or Xantic customer number, user name and password; (4) e-mail address of transceiver; (5) Inmarsat identification number; (6) owner name; (7) vessel name; (8) vessel documentation or registration number; and (9) mobile earth station license (FCC license).

The OLE will provide an installation and activation checklist that the vessel owner must follow. The vessel owner must sign a statement on the checklist certifying compliance with the installation procedures and return the checklist to OLE. Installation can be performed by an experienced crew or by an electronics specialist, and the installation cost is paid by the owner.

The owner may confirm the TT-3026D operation and communications service to ensure that position reports are automatically sent to and received by OLE before leaving on a trip under VMS. The OLE does not regard the vessel as meeting requirements until position reports are automatically received. For confirmation purposes, contact the NOAA Fisheries Office for Law Enforcement, 8484 Georgia Ave., Suite 415, Silver Spring, MD 20910, phone 888-219-9228, fax 301-427-0049.

Telenor Satellite Services

Inmarsat-C is a store-and-forward data messaging service. Inmarsat-C allows users to send and receive information virtually anywhere in the world, on land, at sea, and in the air. Inmarsat-C supports a wide variety of applications including Internet, e-mail, position and weather reporting, a free daily news service, and remote equipment monitoring and control. Mariners can use Inmarsat-C free of charge to send critical safety at sea messages as part of the U.S. Coast Guard's Automated Mutual-Assistance Vessel Rescue system and of the NOAA Shipboard Environmental Acquisition System programs. Telenor Vessel Monitoring System Services is being sold through Thrane & Thrane, Inc. For the Thrane & Thrane and Telenor addresses, look inside this notice under the heading "VMS Provider Address".

Xantic

Xantic is a provider of Vessel Monitoring Services to the maritime industry. By

installing an approved OLE Inmarsat-C transceiver on the vessel, vessels can send and receive e-mail, to and from land, while the transceiver automatically sends vessel position reports to OLE, and is fully compliant with the International Coast Guard Search and Rescue Centers. Xantic Vessel Monitoring System Services are being sold through Thrane & Thrane, Inc. For the Thrane & Thrane and Xantic addresses, look in this notice under the heading "VMS Provider Address".

For Telenor and Xantic, Thrane & Thrane customer service supports the security and privacy of vessel accounts and messages with the following: (a) Password authentication for vessel owners or agents and for OLE to prevent unauthorized changes or inquiries; and (b) separation of private messages from OLE messages. (OLE requires VMS-related position reports, only.)

Billing is separated between accounts for the vessel owner and the OLE. VMS position reports and vessel-initiated messaging are paid for by the vessel owner. Messaging initiated from OLE operations center is paid for by NOAA.

Thrane & Thrane provides customer service for Telenor and Xantic users to support and establish two-way transmission of transceiver unit configuration commands between the transceiver and land-based control centers. This supports OLE's message needs and, optionally, the crew's private message needs.

The vessel owner can configure automatic position reports to be sent to a private address, such as to a fleet management company.

Vessel owners wishing to use Telenor or Xantic services will need to purchase an Inmarsat-C transceiver approved for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument. The owner will need to complete an Inmarsat-C system use contract with Telenor or Xantic, including a mobile earth station license (FCC requirement). The transceiver will need to be commissioned with Inmarsat according to Telenor or Xantic's instructions. The owner should refer to and follow the configuration, installation, and service activation procedures for the specific transceiver purchased.

III. VMS Provider Address

For TT-3026D, Telenor, or Xantic information, contact Ronald Lockerby, Marine Products, Thrane & Thrane, Inc., 509 Viking Drive, Suite K, L & M, Virginia Beach, VA 23452; voice: 757-463-9557; fax: 757-463-9581, e-mail: rdl@tt.dk.com; Web site: <http://www.landseasystems.com>.

[FR Doc. 06-7235 Filed 8-25-06; 12:24 pm]

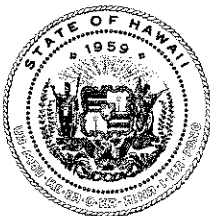
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Appendix D

Sample Northwestern Hawaiian Islands State Marine Refuge Permit

(This is an index page only.)

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Permit No.: DLNR/NWHI/07RXXX
Effective Date: XX/XX/2007
Expiration Date: XX/XX/2007
Application Fee received: N/A
Board Hearing Date: XX/XX/2007

**NORTHWESTERN HAWAIIAN ISLANDS
STATE MARINE REFUGE
RESEARCH PERMIT**

The Board of Land and Natural Resources (hereinafter the "Board"), on its resolution adopted on February 23, 2007, pursuant to §13-60.5, *Hawaii Administrative Rules*, and § 187A-6, *Hawaii Revised Statutes*, and all other applicable laws and regulations, hereby grants one Northwestern Hawaiian Islands (NWHI) State Marine Refuge Research Permit to:

A. PROJECT LEADER/PERMITTEE:

Example Only

B. PROJECT TITLE AND PERMIT PURPOSE:

Project Title: Example Permit

Permit Purpose: Example.

C. PERMITTED PERIOD:

This Research Permit (DLNR/NWHI/07RXXX), as signed by the Chairperson of the Board, covers all activities undertaken from XXX ZZ, 2007 through YYY ZZ, 2007 in designated State waters of the Northwestern Hawaiian Islands State Marine Refuge.

D. PERMITTED ACTIVITIES:

This Permit authorizes the Permittee and other personnel listed herein or to be named in subsequent amendments, to engage in the following activities not otherwise prohibited by the law or regulations, subject to the conditions as listed in this Permit:

(Example)

- ☒ Enter the NWHI Marine Refuge waters
- ☒ Anchor (allowed for both the support vessel and small boats)
- ☒ Operate small boats for the purposes of permitted research activities
- ☒ Other activities: Allow swimming and snorkeling of authorized personnel for research activities and personal hygiene.
- ☒ Other activities: Collection and transport of specimens listed in Section F below.

E. PERMITTED LOCATIONS:

Permittee and authorized personnel covered under this Permit are allowed to enter and conduct above-mentioned activities in the NWHI State Marine Refuge waters (0-3 nautical miles from shoreline) surrounding:

(For Example Only)

- ☒ Nihoa Island
- ☒ Mokumanamana (Necker) Island
- ☒ French Frigate Shoals,
- ☒ Laysan Island
- ☒ Lisianski Island,
- ☒ Pearl and Hermes Atoll
- ☒ Midway Atoll, and
- ☒ Kure Atoll.

F. COLLECTION OF SPECIMENS

Example

G. SPECIAL PERMIT CONDITIONS:

This Permit is subject to the following special conditions:

1. During the permitted period and before participating in a cruise allowed under this Permit, Permittee and all authorized personnel who participate in any activities in the NWHI under this permit shall attend a cultural briefing on the Northwestern Hawaiian Islands, their cultural significance and related Native Hawaiian practices.
2. Permittee shall submit a cruise plan to DAR prior to each cruise to the NWHI allowed under this Permit, and shall timely update the personnel list with DAR if there is any change or addition thereof.
3. Each of the authorized personnel who participate in any activities in the NWHI under this permit shall, prior to any of such activities, read and attest with signature to the full agreement

of all the term and conditions of this Permit. The signature/declaration sheets shall be submitted to DAR along with the updated personnel list, if any, prior to departures to the NWHI.

4. Permittee shall, within thirty (30) days of each concluded cruise to the NWHI, submit to the State through DAR a cruise report for the trip as required in the following General Permit Conditions.
5. All forms of fishing, no matter for subsistence, sustenance, commercial or recreational purposes, are prohibited in all NWHI State waters.
6. Pursuant to Section 188-23, HRS, any use of electrical shocking devices, explosives, chemicals or other contaminating or hazardous substances is expressly prohibited, except to the extent that certain chemicals are allowed for use onboard of support vessels with limitations as to the types and amounts as stated in Permittee's application. Transportation of such materials in State waters is also allowed for transit purpose only.
7. All vessel support activities as related to Permittee's activities in the NWHI State waters under this permit, except those directly related to emergency response actions, shall require separate permit(s) approved and granted by the Board based on separate application(s). All vessels to be permitted to carry out Permittee's activities shall be subject to all the applicable protocols with regard to disease control, invasive species prevention and anchoring.
8. A log or report of all waste disposals occurring aboard any support vessels during the cruise shall be submitted to DAR with the mandatory cruise report. The log shall be maintained daily for all discharges occurring aboard vessels, shall include time, date, volumes, and description of the released and the person(s) who releases it, and shall be signed by the vessel's captain.
9. No black water, food scraps, solids, chemicals, or waste liquid will be released into State waters.
10. A daily impact log will be maintained by the Chief Scientist on the trip, whereby all organisms collected by personnel will be documented on a daily basis relative to the species collected, the amount, the size of the specimens, the location (including specific GPS points), and the status of the specimen(s). The log entry will be signed by the person who collected the organisms and countersigned by the Chief Scientist or his delegate after validation of the collection.

H. GENERAL PERMIT CONDITIONS:

This Permit is further subject to the following general conditions:

NORTHWESTERN HAWAIIAN ISLANDS STATE MARINE REFUGE RESEARCH PERMIT GENERAL CONDITIONS

1. This permit does not make the Board of Land and Natural Resources or the State of Hawaii liable in any way for any claim of personal injury or property damage to the permittee or assistants which may occur during any activity authorized by this permit; moreover, the permittee and all assistants agree to hold the State harmless against any and all claims of

personal injury, death or property damage resulting from activities of the permittee or any assistant, actions or omissions under this permit.

2. This permit conveys a privilege to engage in activities within State waters under the jurisdiction of the Division of Aquatic Resources (DAR). The permittee is responsible for complying with all applicable County, State, and Federal requirements.
3. The permittee and other personnel are individually responsible and accountable for their actions while conducting activities authorized under this permit. Additionally, the permittee is responsible and accountable for the actions of the permittee's assistants.
4. This permit is not transferable or assignable. Any person whose name does not appear on this permit and is conducting any activity described herein is subject to prosecution for violations of State Laws. The permit holder must abide by all provisions set out in the permit as well as other applicable regulations.
5. Permitted activities must be conducted with adequate safeguards for the environment. To the extent possible, the environment shall be restored to its existing condition prior to the cessation of the permitted activity.
6. Permits must be carried aboard vessels and made available on request for inspection by the DLNR or USFWS Refuge or other enforcement personnel. For in-water activities, it is recommended that a copy of the permit be laminated and available for display at all times, in addition to copies held by personnel and aboard the major form of transport into the NWHI State Marine Refuge and the NWHI Marine National Monument.
7. All private vessels used to access the NWHI Marine Refuge must carry a minimum amount of Wreck Removal and Pollution insurance, specifically targeted and sufficient to provide for the vessel's full extraction and removal from the NWHI should it run aground or experience difficulties. The extraction method used must be approved by the Board and by other appropriate State or Federal resource trustees.
8. Any vessel causing damage to marine resources within the refuge may be subject to citation from DLNR and fines from the Board, in addition to costs necessary to mitigate the disturbance caused.
9. Recent concerns over the proliferation of alien algae in the main Hawaiian Islands have resulted in the need for a strong effort on the part of any visitor that conducts activities in the pristine waters of the NWHI to insure that they do not serve as vectors for the accidental introduction of these species. The minimum successful fragmentation size for at least two of the concerned algal species is less than 1 cm. The Board requires that all activities in State waters in the NWHI take all steps necessary to eliminate the possibility of accidentally transferring these (and other) harmful species into new ecosystems where they might gain a foothold. As such, DLNR has developed a set of requirements for all divers and snorkelers to follow prior to departure for the NWHI:

- a. Unzip and open all pockets on buoyancy compensators, dive bags and wet suits;
 - b. Submerge and soak all dive gear (including dive bags) and transecting gear for a minimum of 24 hours in 100% fresh water;
 - c. Thoroughly dry and then visually inspect all gear prior to departure for NWHI; and
 - d. Any algal pieces must be removed and discarded prior to departure.
10. The transport vessel, as well as all tenders and dive boats (inflatables, whalers), engines, anchor lines, etc. will be visually inspected for any algal remnants or other alien species which must be removed prior to departure for the NWHI. If necessary, the vessels must be washed and fumigated prior to departure from the main Hawaiian Islands. This shall be properly documented, records of which must be immediately submitted to the State upon request.
11. The same procedure above is required of all expeditions traveling to multiple islands within the NWHI. If drying and inspection occur after departure then the algal pieces must be retained in sealed containers until they can be disposed of back on O'ahu. Extreme care must be taken to kill these specimens (freshwater soak for 24 hours followed by drying and placement in sealed containers) during transport.
12. All participants (including crew) in a permitted activity or aboard a permitted mode of transport will abide by the non-harassment of protected and unique marine wildlife policy. This includes staying away from Hawaiian monk seals and sea turtles, minimizing disturbance to assemblages of large apex predators such as jacks, sharks or grouper, and avoiding damage to any live coral or live rock.
13. In accordance with Federal and State Laws, there will be no intentional release of sewage, food scraps, solids, or chemicals from the transport vessel in State waters during the permitted expedition. All sewage and other discharge items will be held in a proper storage tank until it can be off-loaded to proper handling facilities or until other written approved protocols are in place.
14. Tenders will be outfitted with EPA omissions approved outboard engines that meet the latest environmental standards.
15. Refueling of tenders and all small vessels will be done at the mother ship and outside the confines of the lagoons or near-shore waters.
16. Tender and dive vessels will operate at slow speed and with a bow lookout in shallow water NWHI coral reef areas in order to minimize prop or bow damage to three dimensional coral reef habitat or endangered monk seals or sea turtles.
17. Anchoring:
 - a. Permitted Transport Vessel: It is illegal to anchor on living coral reef areas in the NWHI. Transport vessels will endeavor to anchor as far offshore as possible and will try to pre-determine anchorages prior to departure.

- b. Tenders and Dive Vessels: It is illegal to anchor on living coral reef areas in the NWHI while conducting inshore operations. In those areas where anchoring needs to occur adjacent to living coral resources, placement and retrieval of the anchor will be done by hand whenever this procedure can be done in a safe and prudent manner.
18. The permittee, assistants and ship's crew agree to provide access to data, logs, photos and other documentation obtained under, or required by, this permit upon request of the Division, and to allow Department staff to inspect on-board the vessel, or afterwards on the permittee's premises, any and all organisms and other samples collected under this permit. Furthermore, the permittee and assistants agree to provide to the Division a copy of each published report prepared with data obtained under this permit.
 19. The permittee may request changes to the permit. Any such request to make changes to the permit must be made in writing and received by DAR at least two weeks prior to the change, except in cases of emergencies. No change may be implemented without written approval from DAR. In this manner, the permittee may request to:
 - a. Add assistants to the permit;
 - b. Add another permittee or be replaced by another permittee; and
 - c. Make changes to the activities allowed under this permit.
 20. This permit expires on the date indicated on Page 1.
 21. This permit is not to be used for nor does it authorize the sale of collected organisms. The research activity must be non-commercial and will not involve the sale of any organism, byproduct, or material collected. Furthermore, any resources or samples collected are a public trust, and are not to be used for sale, patent, bioassay, or bio-prospecting, or for obtaining patents or intellectual property rights.
 22. The permittee may not convey in any fashion (including, but not limited to, selling, trading, or giving) any corals, live rocks or any organisms collected under this permit to any person or party which does not already have a permit from the Hawaii Department of Land and Natural Resources authorizing possession of the same and without direct, written approval from DAR.
 23. Permit holders agree to submit a project report and cruise log to DAR within 30 days after returning to Honolulu. The project report will be a brief (1-2) page statement summarizing the results of permitted activities. A cruise log shall list the days spent in the Marine Refuge, activities carried out, approximate positions, and general observations. Permit holders must also provide DAR with project summaries, GPS locations, visuals, technical reports, and/or catch reports (if applicable) for activities undertaken while in the NWHI Marine Refuge as specified in the conditions of their individual permit.
 24. Permit holders are encouraged to immediately report to DAR observation of any impacts to the marine resources, whether directly caused by their activities or not. This includes observations of activities conducted by other parties along with both natural and anthropogenic events. Permittees provide a valuable role as 'eyes and ears' on the water. All recorded observations

by permittees will provide additional information and assist with management of the refuge. Such reporting shall include full documentation with notes, logs, photos, GPS, and other information as may be required.

25. A violation of any terms or condition of this permit or any violation of State law not covered by this permit may result in revocation of the permit and other penalties as provided by law. In addition, DAR may consider any such violation as grounds for denying any future permit applications.
26. The issuance of a permit shall not constitute a vested right to receive additional or future permits. There is no right to a renewal or re-issuance of a permit.
27. The Board may immediately amend, suspend, or revoke a permit granted pursuant to these guidelines, in whole or in part, temporarily or indefinitely, if the permit holder(s) has acted in violation of the terms of the permit, or for any good cause shown. Formal notice of such action shall be subsequently communicated in writing to the permit holder and shall set forth the reason for the action taken. Any verbal notification from a Board representative of a violation will also result in immediate cessation of all activities within the Refuge.
28. Disease protocols:
 - a. All sampling and dive gear that has come in contact with substrate will be disinfected in an enclosed container for 10 minutes or more between sites with disinfecting¹ solution in order to kill any microorganisms and eliminate the possibility of disease transmission by researchers.
 - b. Wet lab surfaces will be wiped down after each activity with disinfecting¹ solution in order to kill any microorganisms and eliminate the possibility of disease transmission by researchers.²
 - c. Tender vessels must be rinsed (internal and external) with fresh water between islands, including during transits in either direction between Papahānaumokuākea Marine National Monument and the main Hawaiian islands. Tender vessels must be inspected daily for any algal fragments or other organisms. Deposit algal fragments etc. in the ships solid waste disposal or other secure holding system
29. No live organisms will be transported, unless otherwise authorized by this permit. Samples will be killed by freezing, immersion in ethanol, liquid Nitrogen, or other acceptable means, aboard the vessel and prior to leaving State waters.

¹ The composition of the disinfecting solution is currently under review by the disinfection procedure working group, comprised of representatives from the State of Hawaii, United States Fish and Wildlife Service, Papahānaumokuākea Marine National Monument, and the National Marine Fisheries Service. The disinfecting solution protocols will be provided to permittee prior to the effective date of this permit

² Any deviation from this condition will require advance, written notice to DAR, and be subject to DAR's review and approval.

30. A daily log shall be submitted to and maintained by the appointed State or other co-trustee representative whereby any organisms collected will be documented on a daily basis relative to what was collected, the amount, the size of the specimens, the location (including specific GPS points), and the status of the specimen(s). The log entry will be signed by the person who collected the organisms and countersigned by the State representative after validation of the collection; this log will constitute a legal document for enforcement purposes.

I. LIST OF AUTHORIZED PERSONNEL

(Example)

A listing of any additions or changes to personnel shall be submitted to the State in formal updates.

J. ACKNOWLEDGEMENT OF PERMITTEE:

By my signature below, I attest that I understand the general and special permit conditions attached herein to the NWHI State Marine Refuge Research Permit No. DLNR/NWHI/07RXXX. I further agree to abide by the law, regulations and the permit conditions when undertaking all activities under the authority of this Permit. I understand that any violation of applicable law or regulations or the terms and conditions of this Permit may result in the imposition of criminal, administrative and/or civil penalties.

DATED: Honolulu, Hawaii, _____, 2007

(Signature)

Project Leader/Permittee: _____

Name
Title

K. APPROVAL BY THE BOARD:

APPROVED AND GRANTED.

DATED: Honolulu, Hawaii, _____, 2007

PETER T. YOUNG
Chairperson
Board of Land and Natural Resources

Cc: DOCARE, DLNR
USFWS, Honolulu
NMFS/PIRO
NWHI Marine National Monument

Appendix E

Disease and Introduced Species Prevention Protocol for Permitted Activities in the
Papahānaumokuākea Marine National Monument.

(This is an index page only.)

**Disease and Introduced Species Prevention Protocol
for Permitted Activities in the Marine Environment
Papahānaumokuākea Marine National Monument (Monument)**¹

I. Equipment and Dive Gear Disinfection

Equipment and gear is treated according to three levels that correspond to the potential for the spread of disease and/or introduced species.

General points applicable to all the levels and acceptable disinfection solutions are listed in part D.

A. Level One: Equipment in direct contact with diseased coral tissue or other diseased organisms

- Equipment: includes gloves, chisels, forceps, drill bits, shears, clippers, and spear tips, etc.
- Multiple sets of equipment: Use a disinfected set of equipment for diseased organisms and another disinfected set of equipment for non-diseased organisms at each dive site.
- Disinfect between uses: Use a disinfected set of equipment at each dive site.
- Disinfection method: 1) Remove any organic matter from the equipment. 2) Soak equipment for a minimum of ten minutes in a 1:32 dilution of commercial bleach in freshwater (1/2 cup bleach per gallon of freshwater), yielding a 1000 ppm dilution of sodium hypochlorite, or 3% free chlorine solution.
- Secure all samples: Seal all samples in bags or jars under water and place sample bags and jars in secure holding container.

B. Level Two: Benthic equipment not used to sample diseased coral tissue or other diseased organisms

- Benthic equipment: includes equipment that may contact the benthos such as reels, tape measures, goodie bags, transect lines, etc.
- Disinfect between sites: Use a disinfected set of equipment at each dive site.
- Disinfect equipment: 1) Remove any organic matter from the equipment. 2) Soak and or wipe equipment as specified for equipment type, below. See list of acceptable disinfection solutions in part D.

1. Non-porous equipment must be wiped and/or soaked. If wiping, use wipes in which the active ingredient is a quaternary ammonium compound (QAC). Acceptable wipes include Clorox® wipes or Lysol® wipes. If

¹ This protocol and a companion document, "Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment of the Papahānaumokuākea Marine National Monument Explanation," were accepted at the April 9, 2007 Monument Management Board Meeting.

soaking, soak for a minimum of ten minutes in an acceptable disinfectant solution.

2. Porous equipment must be soaked for a minimum of ten minutes in an acceptable disinfectant solution.

C. Level Three: All dive gear used in the Monument

- Dive gear includes any wetsuit, mask, fin, snorkel, BC, regulator, weight belt, booties, etc.
- Disinfect dive gear daily (if used): 1) Remove any organic matter. 2) Disinfect by submerging for a minimum of ten minutes in an acceptable disinfection solution, followed by a thorough fresh water rinse, and hanging to dry.
- Rinse after disinfection: Rinse all gear in close proximity to the face or skin, e.g. masks, regulators, gloves, etc. with potable water following disinfection.

D. General points applicable to all three levels

- Disinfect any equipment and gear at least daily if used. Also, only disinfected equipment and gear may be transported either direction between the Monument and the main Hawaiian islands or other point of origin/destination.
- Dispose of organic matter, used disinfection solution, and rinse according to the ship's solid waste disposal or other approved secure holding system.
- Acceptable Disinfection Solutions:
 1. Levels One, Two, and Three: a 1:32 dilution of commercial bleach in freshwater (1/2 cup bleach per gallon of freshwater), yielding a 1000 ppm dilution of sodium hypochlorite, or 3% free chlorine solution; and
 2. Levels Two and Three: For dive gear and level two equipment, the manufacturer's recommended disinfection strength dilution of QACs in "soft" (low concentration of calcium or magnesium ions) fresh water. An example of an acceptable QAC solution is Lysol® All Purpose Cleaner in a 6.6% Lysol in water dilution.
- Rinse after disinfection: All gear in close proximity to the face or skin, e.g. masks, regulators, gloves, should be rinsed with potable water following disinfection.

II. Cleaning Tender Vessels

- At least daily if tender vessel if used, inspect for and remove for any algal fragments or other organisms (dispose of organic matter and used solution according to the ship's solid waste disposal or other approved secure holding system).

- Rinse tender vessel internal and external surfaces with fresh water between islands, including during transits in either direction between the Monument and the main Hawaiian islands or other point of origin/destination.
- Allow tender vessel to dry before redeployment.

III. Disinfection of Shipboard Wet Laboratory

- At least daily if used, disinfect entire laboratory, including sinks, countertops, walls, doors, and floors.
- Acceptable Disinfection Solutions and Wipes:
 1. a 1:32 dilution of commercial bleach in freshwater (1/2 cup bleach per gallon of freshwater), yielding a 1000 ppm dilution of sodium hypochlorite, or 3% free chlorine solution;
 2. the manufacturer's recommended disinfection strength dilution of QACs in "soft" (low concentration of calcium or magnesium ions) fresh water. An example of an acceptable QAC solution is Lysol® All Purpose Cleaner in a 6.6% Lysol in water dilution. Also, commercially available wipes containing QACs (e.g. Clorox® wipes, Lysol® wipes) are acceptable; and
 3. 70-80% ethanol.
- Dispose of all materials generated during cleaning according to the ship's solid disposal or other secure holding system.
- The laboratory must be clean between islands, including during transits in either direction between the Monument and the main Hawaiian islands.

Appendix F

Disease and Introduced Species Prevention Protocol for Permitted Activities in the
Papahānaumokuākea Marine National Monument
- Explanation

(This is an index page only.)

**Disease and Introduced Species Prevention Protocol
for Permitted Activities in the Marine Environment
Papahānaumokuākea Marine National Monument¹
Explanation**

I. Background and Context for Protocol

The Co-Trustees of the Papahānaumokuākea Marine National Monument (Monument) (State of Hawaii, Department of the Interior - Fish and Wildlife Service and the Department of Commerce - National Oceanic and Atmospheric Administration) recognize the importance of preventing any transmission of disease or introduction of species to the ecosystems of the Monument. Although protocols for cleaning equipment, ship laboratories, and vessels have been implemented, the Co-Trustees have determined that a standard protocol that would require specific cleaning and disinfecting methods would be advisable to protect against the likelihood of transmission. To this end, the Co-Trustees collaborated to develop the Disease and Introduced Species Prevention Protocol. This protocol will apply to Monument-permitted activities that include diving and the use of ship laboratories and tender vessels. The protocol is precautionary in its approach, wherein cleaning and disinfection requirements are commensurate with the potential for transmission.

The result of the collaboration, research, vetting, and revision is a protocol that adopts a precautionary approach to preventing the spread of disease and introduced species to or from the Monument. For example, there are three levels of disinfection for equipment and gear that correspond to the likelihood and potential risk of transmission. For example, in this approach, equipment that directly contacts diseased coral would be cleaned differently than equipment that contacts no coral. In implementing this precautionary approach, only the appropriate amount of cleaning agents (chemicals) is required and wear on equipment is minimized.

This protocol is not meant to apply to coral disease outbreaks (other protocols have been implemented in areas of the world where these outbreaks have occurred); coral disease outbreak protocols should be considered separately.

This protocol may be amended as more information becomes available regarding the efficacies of the treatment of dive gear, equipment, etc., as well as the modes of infection and transmission of disease and introduced species and other relevant information. To this end, this protocol should be reviewed at least annually.

¹ This document provides background for the “Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment of the Papahānaumokuākea Marine National Monument” (protocol). This document and the protocol were accepted at the April 9, 2007 Monument Management Board Meeting.

II. Investigation of Potential Disinfectants

Numerous chemicals were considered in our discussions of common disinfectants used in laboratory and scientific situations. After an initial brainstorming session to identify potential disinfectants, the group proceeded to investigate each likely candidate. The primary factor the group considered in the investigations of potential disinfectants was the efficacy of the disinfectant against bacteria and viruses. Other factors considered were: potential irritation to human skin and/or eyes; corrosiveness and subsequent potential damage to SCUBA-diving equipment and field gear, particularly critical life-support equipment such as regulators; ease of procurement and use; monetary cost of disinfection; feasibility of use in field situations, including aboard ships and small boats; and feasibility in terms of compliance with Monument regulations.

A. *Alcohols*

Pros:

- Effective disinfectants when used in 70-85% strength solutions¹

Cons:

- Relatively expensive
- Transporting large quantities of alcohol is dangerous due to its flammability
- Should not be used in closed areas due to the fire hazard
- Irritant to eyes and tissue⁴

Recommendation:

Alcohol may be an appropriate solution for rapid decontamination of small objects, but is not recommended as a disinfectant of dive gear.

B. *Phenols*

Pros:

- Effective disinfectant in the presence of organic material
- Low to moderate cost⁴

Cons:

- Ineffective against non-enveloped viruses and spores
- Corrosive
- Irritant to skin, eyes, and respiratory tract

Recommendation:

Not recommended as a disinfectant of dive gear.

C. *Iodine/Iodophor compounds*

Pros:

- Effective disinfectants - more effective than bleach in terms of sporicidal activity⁴
- Moderate in cost

Cons:

- Inactivated by organic materials
- Stains fabrics⁴

- Corrosive – known to break down rubber components of dive gear⁶
- Irritant to skin, eyes, and respiratory tract^{1,4}

Recommendation:

Not recommended as a disinfectant of dive gear.

D. *Chlorhexidine (biguanide compounds)*

Pros:

- Relatively non-irritating to tissues
- Low in cost

Cons:

- Less effective against bacteria, viruses, and fungi than other disinfectants⁴
- Extended contact time for effective disinfection required⁴
- Inactivated by hard or alkaline water

Recommendation:

Not recommended as a disinfectant of dive gear.

E. *Aldehydes (i.e. gluteraldehyde and formaldehyde)*

Pros:

- Extremely effective disinfectants
- Effective in the presence of organic materials⁴

Cons:

- Expensive
- Highly toxic to humans⁴
- Irritant to skin, eyes, and respiratory tract⁴

Recommendation:

Not recommended as a disinfectant of dive gear.

F. *Bleach (Sodium hypochlorite compounds)*

Pros:

- Extremely effective disinfectant
- Low in cost⁴

Cons:

- Corrosive – corrodes metals and deteriorates fabric⁴
- Irritant to skin and eyes
- Vapors are harmful to breathe^{1,3}
- Organic materials inactivate bleach - gear must be cleaned of organic matter before disinfection

Recommendation:

Bleach may be used for disinfection, but with caution. QACs (see below) are preferred for use with life-support gear, due to (their non-irritant and non-corrosive nature) corrosivity concerns.

G. *Quaternary ammonium compounds (contain NH₄)*

Pros:

- Wide germicidal range
- Low in cost^{1,4}
- Non-corrosive - will not damage lenses, plastics, rubber, or metal surfaces⁶
- Non-irritating to the skin, eyes, or respiratory tract
- Odorless¹

Cons:

- Inactivated by organic material - gear must be cleaned of organic matter before disinfection
- Efficacy limited by soaps and extremely hard water⁴
- Ineffective against non-enveloped viruses, spores, and fungi

Recommendation:

Quaternary ammonium compounds (QACs) are recommended as the disinfectant of choice for dive gear as long as appropriate precautions are used (cleaning of organic material, no mixing with soap or hard water salts). Based on information from the Navy and the Divers Alert Network, QACs are also recommended by UnderWater Commercial Diving Magazine as disinfectants.⁶

Note:

QACs are often listed on labels as a form of ammonium chloride, preceded by one of the following: alkyl aryl, benzyl, didecyl, ethylbenzyl, octyl, or a combination thereof. Commercial preparations of QACs intended for dive gear sterilization are available, such as SaniZide Plus, Advance TBE, and Confidence Plus.⁶ Laboratory sources of QACs include Roccal, Quats, Lysoquat, Multi-Quat, TKO, Utmost, D-128 and Zephiran. These are generally used in 0.1-2.0% dilutions. Lysol All Purpose Cleaner® (containing n-alkyl dimethyl benzyl ammonium chloride), utilized in 6.6%, 1.7%, or 0.86% strength, was equally effective in all dilutions at eliminating >99.9% of *Staphylococcus* bacteria.³

H. *Fresh Water and Drying Alone*

Pros:

- Fresh water rinse, followed by 18 hours of dry time, is extremely effective in reducing concentrations of coral disease-causing organisms on diver wetsuit material
- Fresh water is a successful method for killing invertebrate larvae and bursts the cells of marine dwelling algae and sponges by osmotic shock^{2,5}

Cons:

- Fresh water rinse, with one hour of drying time, has very limited efficacy in disinfection
- Fresh water rinse, followed by 18 hours of dry time, is not effective in reducing concentrations of human-disease causing *Staphylococcus* on diver wetsuit material³
- The 18 hours of drying time needed for effective disinfection is not feasible in shipboard diving situations

Recommendation:

Fresh water rinsing and drying is not recommended as an effective strategy against disease-causing organisms (due to the drying time needed), but is considered a useful strategy for control of alien species.

III. Protocol Explanation

A. Equipment and Dive Gear Disinfection

The following is a detailed explanation for the three tier approach to cleaning equipment and dive gear:

1. Level One: Equipment in direct contact with diseased coral tissue or other diseased organisms

First level equipment is equipment that is considered most likely to potentially contribute to the spread of disease between reefs or sites because this equipment directly contacts diseased coral tissue. Therefore, very stringent protocols are recommended for first level equipment. This protocol requires two sets of clean equipment (one set for healthy corals, and one set for diseased corals) to be carried and employed if sampling diseased or healthy coral on any given dive. This will prevent the likelihood that disease could spread between corals from sampling with the same equipment on any one dive. Sampling equipment must be thoroughly cleaned and disinfected or a new set of clean gear must be used on any subsequent dive. Furthermore, all samples must be sealed in bags or jars before surfacing (under water) and placed in a secure secondary-containment vessel in the small boat.

The protocol requires physical removal of any organic matter from the equipment, followed by a chemical cleaning for disinfection. Physical cleaning is required because organic matter may limit the efficacy of bleach solutions.⁴ Disinfection is achieved by soaking gear for ten minutes in a 1:32 dilution of commercial bleach in freshwater (1/2 cup bleach per gallon of freshwater), yielding a 1000 ppm dilution of sodium hypochlorite, or 3% free chlorine solution.

This disinfection methods achieve >99.9% elimination of disease-causing bacteria. Fresh disinfection solutions are required to be prepared at least once per day and transported safely aboard small boats in an enclosed container. All used disinfection solutions and any disinfection wipes used to remove organic matter must be disposed of properly and in accordance with Monument regulations and the ship's marine sewage disposal system requirements.

2. Level Two: Benthic equipment not used to sample diseased coral or other diseased organisms

Second level benthic equipment is equipment that is likely to contact the benthos, and was assessed to be of very low risk for disease transmission, and of moderate risk for

introduction of species. As a general best practice, wherever possible, SCUBA divers place benthic equipment on bare rock or sand, avoiding any contact with live corals. Occasionally, however, second level equipment contacts live coral. For example, transect lines sometimes contact live coral. As this equipment is unlikely to contact diseased corals (the incidence of diseased corals on reefs of the Monument is generally very low (prevalence: $0.38 \pm 0.07\%$; mean \pm stder; range = 0-3.38%⁷), and many lesions are generally observable with the naked eye, so equipment contact with diseased corals can be avoided), the protocol requires a level of treatment that is appropriate to achieve disinfection.

Second level equipment must be either wiped or soaked between dives and at the end of each dive day. Second level equipment that is porous, such as goodie bags, must be soaked. Second level nonporous equipment, such as clipboards, may be either soaked or wiped. To achieve a proper soak, the equipment must be submerged in the disinfection solution for a minimum of 10 minutes. Acceptable disinfectants include:

- a solution of the manufacturer's recommended disinfection strength dilution of QACs in "soft" (low concentration of calcium or magnesium ions) fresh water. (Lysol All Purpose Cleaner® in a 6.6% Lysol in water dilution is an appropriate disinfection solution); and
- wipes in which the active ingredient is QACs (e.g., Clorox® wipes or Lysol® wipes).

As cleaning is required at conclusion of each dive day (see below), and transit between atolls is accomplished at night, the protocol will ensure that gear is clean upon arrival to a new island or atoll.

3. Level Three: All dive gear used in the Monument

Third level dive gear is gear that is exceedingly unlikely to make contact with corals. This gear was assessed as a very low risk in terms of disease transmission or introduction of species. As such, this gear is not required to be treated between dive sites if the dives occur within the same day, but must be treated at the end of each dive day. Each dive day, this gear is required to be inspected for any organic matter and all organic matter removed, followed by disinfection and hanging to dry. Any organic matter removed must be disposed of in accordance with Monument regulations and the ship's marine sewage disposal system requirements. Acceptable disinfection solutions include:

- a 1:32 dilution of commercial bleach in freshwater (1/2 cup bleach per gallon of freshwater), yielding a 1000 ppm dilution of sodium hypochlorite, or 3% free chlorine solution; and
- the manufacturer's recommended disinfection strength dilution of QACs in "soft" (low concentration of calcium or magnesium ions) fresh water. (Lysol All Purpose Cleaner® in a 6.6% Lysol in water dilution is an appropriate disinfection solution).

- All gear in close proximity to the face or skin, e.g. masks, regulators, gloves, should be thoroughly rinsed with potable water following disinfection.³

While bleach may be used for disinfection of sampling equipment, QACs are the recommended disinfectant for third-level gear, as it is gear that is likely to contact human skin. As stated above, QACs at the manufacturer's recommended disinfection concentrations are considered neither corrosive nor damaging to gear, nor irritating to human skin, eyes, or respiratory tract.

B. Cleaning Tender Vessels

Tender vessels were assessed to be extremely unlikely vectors for transport of disease organisms. Tenders are hauled aboard the ship daily, rinsed with fresh water and dried between dive days. Drying of this nature was found to be as effective as bleach in the destruction of *Serratia marcescens*, a coral disease-causing pathogen.³ To prevent the spread of introduced species (alien algae or other species), the protocol requires all tender vessels used in any given day to be inspected for organic matter and all organic matter removed. After inspection, the vessels must be rinsed with fresh water and allowed to dry. Any organic matter removed must be disposed of in accordance with Monument regulations and the ship's marine sewage disposal system requirements.

C. Disinfection of Shipboard Wet Laboratory

The protocol requires shipboard wet laboratories to be disinfected (if they have been used) at least daily or when moving between islands/atolls. Use, refers to all practices and procedures occurring in the laboratory space involving sampling tools and equipment, dive gear, as well as live and/or non-fixed biological specimens, utilized for marine field data acquisition. As the wet laboratories are enclosed spaces, QACs are recommended for this cleaning in order to avoid potential health effects associated with the inhalation of bleach fumes. The protocol allows hard, non-porous surfaces to be cleaned by wiping with disinfecting wipes (e.g., Clorox® wipes, Lysol® wipes). Porous laboratory gear must be soaked, and floors, walls, and other surfaces may be cleaned with the following acceptable disinfectant solutions:

- a 1:32 dilution of commercial bleach in freshwater (1/2 cup bleach per gallon of freshwater), yielding a 1000 ppm dilution of sodium hypochlorite, or 3% free chlorine solution;
- QACs (e.g. 6.6% Lysol Disinfectant All Purpose Cleaner® in fresh water) in fresh water; and
- 70-80% ethanol.

A QAC dilution (as detailed above) may be used for mopping the floor, or soaking non-porous laboratory gear for a minimum of ten minutes. Any organic matter removed from laboratory equipment and refuse from disinfection must be disposed of in accordance with Monument regulations and the ship's marine sewage disposal system requirements.

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Appendix G

Disease and Introduced Species Prevention Protocol for Permitted Activities in the
Papahānaumokuākea Marine National Monument – References and Reviews.

(This is an index page only.)

References and Reviews¹
**Disease and Introduced Species Prevention Protocol
for Permitted Activities in the Marine Environment
of the Papahānaumokuākea Marine National Monument**

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